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FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R–1193]

Risk-Based Capital Standards: Trust Preferred Securities and the Definition of Capital

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is amending its risk-based capital standards for bank holding companies to allow the continued inclusion of outstanding and prospective issuances of trust preferred securities in the tier 1 capital of bank holding companies, subject to stricter quantitative limits and qualitative standards. The Board also is revising the quantitative limits applied to the aggregate amount of cumulative perpetual preferred stock, trust preferred securities, and minority interests in the equity accounts of most consolidated subsidiaries (collectively, restricted core capital elements) included in the tier 1 capital of bank holding companies. The new quantitative limits become effective after a five-year transition period. In addition, the Board is revising the qualitative standards for capital instruments included in regulatory capital consistent with longstanding Board policies. The Board is adopting this final rule to address supervisory concerns, competitive equity considerations, and changes in generally accepted accounting principles and to strengthen the definition of regulatory capital for bank holding companies.

EFFECTIVE DATE: This final rule is effective on April 11, 2005. The Board will not object if a banking organization wishes to apply the provisions of this final rule beginning on the date it is published in the **Federal Register**.

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SUPPLEMENTARY INFORMATION:

Background

Trust Preferred Securities and Other Tier 1 Capital Components

The Board's risk-based capital guidelines for bank holding companies (BHCs), which are based on the 1988 Basel Accord, as well as the leverage capital guidelines for BHCs, allow BHCs to include in their tier 1 capital the following items that are defined as core (or tier 1) capital elements: common stockholders' equity; qualifying noncumulative perpetual preferred stock (including related surplus); qualifying cumulative perpetual preferred stock (including related surplus); and minority interest in the equity accounts of consolidated subsidiaries. Since 1989, qualifying cumulative perpetual preferred securities have been limited to 25 percent of a BHC's core capital elements. Tier 1 capital generally is defined as the sum of core capital elements less deductions for all, or a portion of, goodwill, other intangible assets, credit-enhancing interest-only strips receivable, deferred tax assets, non-financial equity investments, and certain other items required to be deducted in computing tier 1 capital.

The Board's capital guidelines allow minority interest in the equity accounts of consolidated subsidiaries of a BHC to be included in the BHC's tier 1 capital because such minority interest represents capital support from third-party investors for a subsidiary controlled by a BHC and consolidated on its balance sheet. Nonetheless, minority interest does not constitute equity on the BHC's consolidated balance sheet because minority interest typically is available to absorb losses only within the subsidiary that issues it and is not generally available to absorb losses in the broader consolidated banking organization. Under the Board's existing capital rule, minority interest is not subject to a specific numeric sub-limit within tier 1 capital, although the includable amount of minority interest is restricted by the rule's directive that voting common stock generally should be the dominant form of tier 1 capital. Minority interest in the form of cumulative preferred stock, however, generally has been subject to the same 25 percent sub-limit as qualifying cumulative preferred stock issued directly by a BHC.

In 1996, the Board explicitly approved the inclusion in BHCs' tier 1 capital of minority interest in the form of trust preferred securities for most of the same reasons that the Board proposed in its May 2004 proposed rule to allow the continued inclusion of trust preferred securities in BHCs' tier 1 capital. In particular, two key features of trust preferred securities—their long lives approaching economic perpetuity and their dividend deferral rights (allowing deferral for 20 consecutive quarters) approaching economically indefinite deferral—are features that provide substantial capital support.

Trust preferred securities are undated cumulative preferred securities issued out of a special purpose entity (SPE), usually in the form of a trust, in which a BHC owns all of the common securities. The SPE's sole asset is a deeply subordinated note issued by the BHC. The subordinated note, which is senior only to a BHC's common and preferred stock, has terms that generally mirror those of the trust preferred securities, except that the junior subordinated note has a fixed maturity of at least 30 years. The terms of the trust preferred securities allow dividends to be deferred for at least a twenty-consecutive-quarter period without creating an event of default or acceleration. After the deferral of dividends for this twenty-quarter period, if the BHC fails to pay the cumulative dividend amount owed to investors, an event of default and acceleration occurs, giving investors the right to take hold of the subordinated note issued by the BHC. At the same time, the BHC's obligation to pay principal and interest on the underlying junior subordinated note accelerates and the note becomes immediately due and

payable. A key advantage of trust preferred securities to BHCs is that for tax purposes the dividends paid on trust preferred securities, unlike those paid on directly issued preferred stock, are a tax deductible interest expense. The Internal Revenue Service ignores the trust and focuses on the interest payments on the underlying subordinated note. Because trust preferred securities are cumulative, they have been limited since their inclusion in tier 1 capital in 1996, together with a BHC's directly issued cumulative perpetual preferred stock, to no more than 25 percent of a BHC's core capital elements.

In 2000, the first pooled issuance of trust preferred securities came to market. Pooled issuances generally constitute the issuance of trust preferred securities by a number of BHCs to a pooling entity that issues to the market asset-backed securities representing interests in the BHCs' pooled trust preferred securities. Such pooling arrangements, which have become increasingly popular and typically involve thirty or more separate BHC issuers, have made the issuance of trust preferred securities possible for even very small BHCs, most of which had not previously enjoyed capital market access for raising tier 1 capital.

Asset-Driven Preferred Securities

In addition to issuing trust preferred securities, banking organizations have also issued asset-driven securities, particularly real estate investment trust (REIT) preferred securities. REIT preferred securities generally are issued by SPE subsidiaries of a bank that qualify as REITs for tax purposes. In most cases the REIT issues noncumulative perpetual preferred securities to the market and uses the proceeds to buy mortgage-related assets from its sole common shareholder, its parent bank. By qualifying as a REIT under the tax code, the SPE's income is not subject to tax at the entity level, but is taxable only as income to the REIT's investors upon distribution. Two key qualifying criteria for REITs are that REITs must hold predominantly real estate assets and must pay out annually a substantial portion of their income to investors. To avoid the situation where preferred stock investors in a REIT subsidiary of a failing bank are effectively over-collateralized by high quality mortgage assets of the parent bank, the Federal banking agencies have required REIT preferred securities to have an exchange provision to qualify for inclusion in tier 1 capital. The exchange provision provides that upon the occurrence of certain events, such as the parent bank becoming undercapitalized or being placed into receivership, the noncumulative REIT preferred securities will be exchanged either automatically or upon the directive of the parent bank's primary Federal supervisor for directly issued noncumulative perpetual preferred securities of the parent bank. In the absence of the exchange provision, the REIT preferred securities would provide little support to a deteriorating or failing parent bank or to the FDIC, despite possibly comprising a substantial amount of the parent bank's tier 1 capital (in the form of minority interest).

While some banking organizations have issued a limited amount of REIT preferred and other asset-driven securities, most BHCs prefer to issue trust preferred securities because they are relatively simple and standard instruments, do not tie up liquid assets, are easier and more cost-efficient to issue and manage, and are more transparent and better understood by the market. Also, BHCs generally prefer to issue trust preferred securities at the holding company level rather than REIT preferred securities at the bank level because it gives them greater flexibility in using the proceeds of such issuances.

Revised GAAP Accounting for Trust Preferred Securities

Prior to the Board's issuance of its proposed rule last May, the Financial Accounting Standards Board (FASB) revised the accounting treatment of trust preferred securities through the issuance in January 2003 of FASB Interpretation No. 46, *Consolidation of Variable Interest Entities* (FIN 46). Since then the accounting industry and BHCs have dealt with the application of FIN 46 to the consolidation by BHC sponsors of trusts issuing trust preferred securities. In late December 2003, when FASB issued a revised version of FIN 46 (FIN 46R), the accounting authorities generally concluded that such trusts must be deconsolidated from their BHC sponsors' financial statements under GAAP. The result is that, for GAAP accounting purposes, trust preferred securities generally continue to be accounted for as equity at the level of the trust that issues them, but the instruments may no longer be treated as minority interest in the equity accounts of a consolidated subsidiary on a BHC's consolidated balance sheet. Instead, under FIN 46 and FIN 46R, a BHC must reflect on its consolidated balance sheet the deeply subordinated note the BHC issued to the deconsolidated SPE.

A change in the GAAP accounting for a capital instrument does not necessarily change the regulatory capital treatment of that instrument. Although GAAP informs the definition of regulatory capital, the Board is not bound to use GAAP accounting concepts in its definition of tier 1 or tier 2 capital because regulatory capital requirements are regulatory constructs designed to ensure the safety and soundness of banking organizations, not accounting designations established to ensure the transparency of financial statements. In this regard, the definition of tier 1 capital since the Board adopted its risk-based capital rule in 1989 has differed from GAAP equity in a number of ways. The Board has determined that these differences are consistent with its responsibility for ensuring the soundness of the capital bases of banking organizations under its supervision. These differences are not differences between regulatory reporting and GAAP accounting requirements, but rather are differences only between the definition of equity for purposes of GAAP and the definition of tier 1 capital for purposes of the Board's regulatory capital requirements for banking organizations.

Nevertheless, consistent with longstanding Board direction, BHCs are required to follow GAAP for regulatory reporting purposes. Thus, BHCs should, for both accounting and regulatory reporting purposes, determine the appropriate application of GAAP (including FIN 46 and FIN 46R) to their trusts issuing trust preferred securities. Accordingly, there should be no substantive difference in the treatment of trust preferred securities issued by such trusts, or the underlying junior subordinated debt, for purposes of regulatory reporting and GAAP accounting.

Proposed Rule

In May 2004, the Board issued a proposed rule, *Risk-Based Capital Standards: Trust Preferred Securities and the Definition of Capital* (69 FR 28851, May 19, 2004). Under the proposal, BHCs would be allowed explicitly to include outstanding and prospective issuances of trust preferred securities in their tier 1 capital.

The Board, however, also proposed subjecting these instruments and other restricted core capital elements to tighter quantitative limits within tier 1 and more stringent qualitative standards. The proposed rule defined other restricted core capital elements to include qualifying cumulative perpetual preferred stock (including related surplus) and minority interest other than in the form of common equity or noncumulative perpetual preferred stock directly issued by a U.S.

depository institution or foreign bank subsidiary of a BHC.

The Board generally proposed limiting restricted core capital elements to 25 percent of the sum of core capital elements, net of goodwill, for BHCs. However, consistent with the 1998 Sydney Agreement of the Basel Committee on Banking Supervision (Sydney Agreement), the proposal also stated that internationally active BHCs generally would be expected to limit restricted core capital elements to 15 percent of the sum of core capital elements, net of goodwill. The proposed rule defined internationally active BHCs to include BHCs that have significant activity in non-U.S. markets or are candidates for use of the Advanced Internal Ratings-Based (AIRB) approach under the revised Basel Accord, International Convergence of Capital Measurement and Capital Standards (June 2004) (the Mid-year Text). The proposal provided an approximately three-year transition period, through March 31, 2007, before BHCs would be required to comply with the proposed revised quantitative limits and qualitative standards.

The Board also proposed to incorporate explicitly in the rule the Board's long-standing policy that the junior subordinated debt underlying trust preferred securities generally must meet the criteria for qualifying tier 2 subordinated debt set forth in the Board's 1992 subordinated debt policy statement, 12 CFR 250.166. As a result, trust preferred securities qualifying for tier 1 capital would be required to have underlying junior subordinated debt that complies with the Board's long-standing acceleration and subordination requirements for tier 2 subordinated debt. Under the proposal, noncompliant junior subordinated debt issued before May 31, 2004 would be grandfathered as long as the terms of the junior subordinated debt met certain criteria.

Comments Received and Final Rule

In response to the proposed rule, the Board received thirty-eight comments. All commenters but one supported the Board's proposal to continue to include outstanding and prospective issuances of trust preferred securities in BHCs' tier 1 capital. Many commenters, however, had some reservations with other aspects of the proposal. These aspects included the deduction of goodwill for purposes of determining compliance with the generally applicable 25 percent tier 1 sub-limit on restricted core capital elements; the 15 percent restricted core capital elements supervisory threshold for internationally active BHCs; the length of the transition period; the technical requirements for the junior subordinated debt underlying trust preferred securities; the grandfathering period for noncompliant issuances of underlying junior subordinated debt; other qualitative requirements for trust preferred securities eligible for inclusion in tier 1 capital; the treatment of restricted core capital elements for purposes of the small BHC policy statement; and the explicit inclusion in the proposed rule of the Board's longstanding policy to restrict the amount of non-voting equity elements included in tier 1 capital. The comments received, as well as the Board's discussion and resolution of the issues raised, are discussed further below.

Continued Inclusion of Trust Preferred Securities in BHCs' Tier 1 Capital

Almost all of the comment letters agreed that the continued inclusion of trust preferred securities in the tier 1 capital of BHCs was appropriate from financial, economic, and public policy perspectives. The commenters encouraged the Board to adopt its proposal to continue to include trust preferred securities in BHCs' tier 1 capital.

Only the comment letter from the Federal Deposit Insurance Corporation opposed the proposal, based primarily on its view that instruments that are accounted for as a liability under GAAP should not be included in tier 1 capital, a view the Board had previously considered before issuance of its proposal. The comment letter also argued that trust preferred securities should be excluded from tier 1 capital because they are not perpetual, have cumulative dividend structures, do not allow for the perpetual deferral of dividends, are treated as debt by rating agencies, put stress on subsidiary banks to pay dividends to BHCs to service trust preferred dividends, and give a capital raising preference to banks with BHCs.

After reconsideration of the issues raised by the FDIC and other commenters, the Board has decided to adopt this final rule allowing the continued limited inclusion of outstanding and prospective issuances of trust preferred securities in BHCs' tier 1 capital. The Board does not believe that the change in GAAP accounting for trust preferred securities has changed the prudential characteristics that led the Board in 1996 to include trust preferred securities in the tier 1 capital of BHCs. In arriving at this decision, the Board also considered its generally positive supervisory experience with trust preferred securities, domestic and international competitive equity issues, and supervisory concerns with alternative tax-efficient instruments.

A key consideration of the Board has been the ability of trust preferred securities to provide financial support to a consolidated BHC because of their deep subordination and the ability of the BHC to defer dividends for up to 20 consecutive quarters. The Board recognizes that trust preferred securities, like other forms of minority interest that have been included in banks' and BHCs' tier 1 capital since 1989, are not included in GAAP equity and cannot forestall a BHC's insolvency. Nevertheless, trust preferred securities are available to absorb losses more broadly than most other minority interest in the consolidated banking organization because the issuing trust's sole asset is a deeply subordinated note of its parent BHC. Thus, if a BHC defers payments on its junior subordinated notes underlying the trust preferred securities, the BHC can use the cash flow anywhere within the consolidated organization. Dividend deferrals on equity issued by the typical operating subsidiary, on the other hand, absorb losses and preserve cash flow only within the subsidiary; the cash that is freed up generally is not available for use elsewhere in the consolidated organization.

As noted, the Board also considered its generally positive supervisory experience with trust preferred securities, particularly for BHCs that limit their reliance on such securities. The instrument has performed much as expected in banking organizations that have encountered financial difficulties; in a substantial number of instances, BHCs in deteriorating financial condition have deferred dividends on trust preferred securities to preserve cash flow. In addition, trust preferred securities have proven to be a useful source of capital funding for BHCs, which often downstream the proceeds in the form of common stock to subsidiary banks, thereby strengthening the banks' capital bases. For example, in the months following the events of September 11, 2001, a period when the issuance of most other capital instruments was extremely difficult, BHCs were able to execute large issuances of trust preferred securities to retail investors, demonstrating the financial flexibility this instrument offers.

Trust preferred securities have reduced the cost of tier 1 capital for a wide range of BHCs. Approximately 800 BHCs have outstanding over $85 billion of trust preferred securities, the popularity of which stems in large part

from their tax-efficiency. Eliminating the ability to include trust preferred securities in tier 1 capital would eliminate BHCs' ability to benefit from this tax-advantaged source of funds, which would put them at a competitive disadvantage to both U.S. and non-U.S. competitors. With respect to the latter, the Board is aware that foreign competitors have issued as much as $125 billion of similar tax-efficient tier 1 capital instruments.

Furthermore, in reviewing existing alternative tax-efficient tier 1 capital instruments available to BHCs, the Board concluded that in several ways trust preferred securities are a superior instrument to such alternative capital instruments, such as REIT preferred securities and other asset-driven securities, which continue to be included in minority interest under FIN 46 and FIN 46R. In this regard, trust preferred securities are available to absorb losses throughout the BHC and do not affect the BHC's liquidity position. In addition, trust preferred securities are relatively simple, standardized, and well-understood instruments that are widely issued by both corporate and banking organizations. Moreover, issuances of trust preferred securities tend to be broadly distributed and transparent and, thus, easy for the market to track.

Under this final rule, trust preferred securities will be includable in the tier 1 capital of BHCs, but subject to tightened quantitative limits for trust preferred securities and a broader range of tier 1 capital components defined as restricted core capital elements. Specifically, restricted core capital elements are defined to include qualifying cumulative perpetual preferred stock (and related surplus), minority interest related to qualifying cumulative perpetual preferred stock directly issued by a consolidated U.S. depository institution or foreign bank subsidiary (Class B minority interest), minority interest related to qualifying common or qualifying perpetual preferred stock issued by a consolidated subsidiary that is neither a U.S. depository institution nor a foreign bank (Class C minority interest), and qualifying trust preferred securities.

Restricted core capital elements includable in the tier 1 capital of a BHC are limited to 25 percent of the sum of core capital elements (including restricted core capital elements), net of goodwill less any associated deferred tax liability, as discussed further below. In addition, as amplified below, internationally active BHCs would be subject to a further limitation. In particular, the amount of restricted core capital elements (other than qualifying mandatory convertible preferred securities discussed below) that an internationally active BHC may include in tier 1 capital must not exceed 15 percent of the sum of core capital elements (including restricted core capital elements), net of goodwill less any associated deferred tax liability.

Deduction of Goodwill in Computing Tier 1 Limits on Restricted Core Capital Elements

Fifteen comment letters opposed the deduction of goodwill from core capital elements in calculating the applicable tier 1 capital sub-limit for restricted core capital elements. Commenters noted that goodwill represents the going concern value paid by banking organizations in acquisitions and mergers and that GAAP, since 2001, has treated goodwill as a non-amortizing asset that is reduced annually, if appropriate, to reflect impairment. A result of the 2001 accounting change is that over the coming years BHCs making acquisitions will accrue higher amounts of goodwill as a percentage of assets than they have in the past. Some of these commenters argued that this would make the proposal's ''net of goodwill'' approach grow increasingly burdensome for BHCs making acquisitions and would potentially reduce merger and acquisition activity in the banking sector.

Other commenters indicated that while they concurred with the Board's reasons for the goodwill deduction—limiting the extent to which BHCs can leverage their tangible equity capital—they believed this goal could be achieved through increased supervisory scrutiny, particularly at community and smaller regional banking organizations, which are subject to less market discipline than larger organizations that routinely access the capital markets. Some commenters also stated that the proposed rule would have a disproportionately binding impact on BHCs that acquire and operate fee-based businesses, including trust and custody businesses, because such BHCs typically have higher market-to-book values and levels of goodwill than other BHCs. A few commenters argued that the interplay of the proposed 15 percent of tier 1 capital supervisory threshold for internationally active BHCs, coupled with the requirement to deduct goodwill in computing compliance with the threshold, would significantly constrain the ability of many large U.S. banking organizations to raise tier 1 capital effectively and competitively.

In addition, a number of commenters suggested that if the Board nonetheless decides to finalize the proposed goodwill deduction, it should do so on a basis that nets any associated deferred tax liability from the amount of goodwill deducted. The basis for this suggestion is that if the value of goodwill is totally eliminated, the deferred tax liability associated with the goodwill also would be eliminated. In effect, the maximum loss that a BHC would suffer from elimination of the value of its goodwill would be the amount represented by its goodwill net of any associated deferred tax liability. Netting the associated deferred tax liability from the goodwill deducted would be consistent with the methodology some rating agencies use in determining tangible equity ratios.

The Board believes that the tier 1 capital sub-limits for restricted core capital elements should be keyed more closely than at present to BHCs' tangible equity—that is, core capital elements less goodwill—and has decided to require the deduction of goodwill as proposed. Goodwill generally provides value for a banking organization on a going concern basis, but this value declines as the organization deteriorates and has little if any value in the event of insolvency or bankruptcy. The deduction approach is in line with the current practice of most G–10 countries, as well as with the Mid-year Text. Although goodwill is also deducted from the sum of a BHC's core capital elements in computing its tier 1 capital, the Board does not believe that deducting it from the sum of core capital elements for purposes of computing the tier 1 sub-limit for restricted core capital elements constitutes a double deduction of goodwill. The Board, however, agrees it would be appropriate to modify the goodwill deduction by netting from the amount of goodwill deducted any associated deferred tax liability. Accordingly, the final rule limits restricted core capital elements to a percentage of the sum of core capital elements, net of goodwill less any associated deferred tax liability.

15 Percent Standard for Internationally Active BHCs

The proposed rule stated that the Board would generally expect internationally active banking organizations to limit the aggregate amount of restricted core capital elements included in tier 1 capital to 15 percent of the sum of all core capital elements (including restricted core capital elements), net of goodwill. The proposal defined an internationally active banking organization as one that has significant activity in non-U.S.

markets or that is considered a candidate for the AIRB approach under the Mid-year Text. The proposed rule specifically requested comment on the definition of an internationally active banking organization.

The Board had several reasons for proposing a lower quantitative standard on the inclusion of restricted core capital elements in the tier 1 capital of internationally active banking organizations. First, because these BHCs are the largest and most complex U.S. banking organizations, it is important for the protection of the financial system to ensure the strength of their capital bases. In this regard, the 15 percent standard is generally consistent with the current expectations of investors and the rating agencies.

In addition, the G–10 banking supervisors participating in the Basel Committee on Banking Supervision agreed in the Sydney Agreement to limit the percentage of a banking organization's tier 1 capital that is composed of innovative securities, which, as defined, would include trust preferred securities, to no more than 15 percent of its tier 1 capital. Although the Board has informally encouraged internationally active BHCs to comply with this standard since 1998, the Board's proposal would have formalized its commitment to this standard.

Eight commenters argued that the 15 percent standard was too restrictive, although most agreed that 25 percent would be appropriate. A number of commenters argued that there is no need for the lower percentage standard for internationally active BHCs because market discipline already restrains their issuance of restricted core capital elements. Also, these commenters stated that the transparent U.S. accounting and disclosure standards remove any material obstacles to investors' ability to analyze the capital components and capital strength of large U.S. banking organizations. Other commenters argued that only BHCs that the Board requires to use the AIRB approach for calculating regulatory capital requirements should be subject to the 15 percent standard and that BHCs that opt-in to the AIRB approach should not be subject to the 15 percent standard because such BHCs may have no international activities and the lower limit could deter them from adopting the advanced risk management approaches necessary to qualify for use of the AIRB approach. Some commenters believed, on the contrary, that if the 15 percent standard were applied to AIRB BHCs, it should be applied to both mandatory and opt-in AIRB BHCs to ensure a level playing field. Several commenters stated that if the 15 percent standard were extended to all AIRB BHCs, institutions should be allowed to permanently grandfather all existing restricted core capital elements.

In light of the comments received, and after further reflection on the issues concerned, the Board has decided to apply the 15 percent limitation only to internationally active BHCs. For this purpose, an internationally active BHC is a BHC that (1) as of its most recent year-end FR Y–9C reports has total consolidated assets equal to $250 billion or more or (2) on a consolidated basis, reports total on-balance sheet foreign exposure of $10 billion or more on its filings of the most recent year-end FFIEC 009 Country Exposure Report. This definition closely proxies the definition proposed for mandatory advanced AIRB banking organizations in the Advance Notice of Proposed Rulemaking to implement the Mid-year Text, which was issued on August 4, 2003. Thus, the 15 percent limit would not apply to banking organizations that opt-in to the AIRB. In arriving at this definition of internationally active, the Board took into account the possible effects of the proposed application of the 15 percent limitation on the capital-raising efforts of moderate-sized BHCs that may opt in to the AIRB approach in the future. The Board also has decided to turn the 15 percent general supervisory expectation into a regulatory limitation to ensure the soundness of the capital base of the largest U.S. banking organizations and to formalize the application of the Sydney Agreement to such banking organizations by regulation. The Board will generally expect and strongly encourage opt-in AIRB BHCs to plan for, and come into compliance with, the 15 percent limit on restricted core capital elements as they approach the criteria for internationally active BHCs. The Board intends to set forth the 15 percent tier 1 sub-limit for internationally active BHCs, as well as this expectation and encouragement for opt-in AIRB BHCs, in its forthcoming notice of proposed rulemaking for U.S. implementation of the Basel Mid-year Text.

Although BHCs that are not internationally active BHCs are not required to comply with the 15 percent tier 1 capital sub-limit, these BHCs are encouraged to ensure the soundness of their capital bases. The Board notes that the quality of their capital components will continue to be part of the Federal Reserve's supervisory assessment of capital adequacy.

The Board has also decided to exempt qualifying mandatory convertible preferred securities from the 15 percent tier 1 capital sub-limit applicable to internationally active BHCs. Accordingly, under the final rule, the aggregate amount of restricted core capital elements (excluding mandatory convertible preferred securities) that an internationally active BHC may include in tier 1 capital must not exceed the 15 percent limit applicable to such BHCs, whereas the aggregate amount of restricted core capital elements (including mandatory convertible preferred securities) that an internationally active BHC may include in tier 1 capital must not exceed the 25 percent limit applicable to all BHCs.

Qualifying mandatory convertible preferred securities generally consist of the joint issuance by a BHC to investors of trust preferred securities and a forward purchase contract, which the investors fully collateralize with the securities, that obligates the investors to purchase a fixed amount of the BHC's common stock, generally in three years. Typically, prior to exercise of the purchase contract in three years, the trust preferred securities are remarketed by the initial investors to new investors and the cash proceeds are used to satisfy the initial investors' obligation to buy the BHC's common stock. The common stock replaces the initial trust preferred securities as a component of the BHC's tier 1 capital, and the remarketed trust preferred securities are excluded from the BHC's regulatory capital.[1]

Allowing internationally active BHCs to include these instruments in tier 1 capital above the 15 percent sub-limit (but subject to the 25 percent sub-limit) is prudential and consistent with safety and soundness. These securities provide a source of capital that is generally superior to other restricted core capital elements because they are effectively replaced by common stock, the highest form of tier 1 capital, within a few years of issuance. The high quality of these instruments is indicated by the rating agencies' assignment of greater equity strength to mandatory convertible trust preferred securities than to cumulative or noncumulative perpetual preferred stock, even though mandatory convertible preferred securities, unlike perpetual preferred securities, are not included in GAAP equity until the common stock is issued. Nonetheless, organizations wishing to issue such instruments are cautioned to have their structure reviewed by the Federal Reserve prior to issuance to ensure that

[1] The reasons for this exclusion include the fact that the terms of the remarketed securities frequently are changed to shorten the maturity of the securities and include more debt-like features in the securities, thereby no longer meeting the characteristics for capital instruments includable in regulatory capital.

they do not contain features that detract from its high capital quality.

Transition Period

Sixteen institutions advocated a transition period of at least five years, instead of the proposed three-year period. A primary reason stated by the commenters was that a significant volume of banking organizations' trust preferred securities were issued after March 2002 with ''no-call'' periods of at least five years (meaning the no-call periods expire at various dates after March 2007). BHCs issuing such instruments in the first quarter of 2004, for example, could call the securities in the first quarter of 2009. These commenters contended that a five-year transition period would allow affected BHCs substantially more flexibility in managing their compliance with the new standards through a combination of redeeming outstanding trust preferred securities with expired no-call periods and generating capital internally through the retention of earnings. Commenters also contended that a five-year transition period would coincide more closely with implementation of Basel II.

The Board has decided, consistent with the comments received, to extend the transition period from the end of the first quarter of 2007 to the end of the first quarter of 2009 to give BHCs more time to conform their capital structures to the revised quantitative limits. The result of this extension is that the revised quantitative limits will become applicable to BHCs' restricted core capital elements for reports and capital computations beginning on March 31, 2009, the reporting date for the first quarter of 2009.

Non-Voting Instruments Includable in Tier 1 Capital

Five commenters objected to the Board's reiteration in the proposal of its long-standing standard in the current capital guidelines that voting common stock should be the dominant form of a BHC's tier 1 capital. These commenters further objected to the proposed incorporation into the capital guidelines of the Board's longstanding written policy that excess amounts of non-voting tier 1 elements generally will be reallocated to BHCs' tier 2 capital. Concerns were expressed that this treatment could result in the exclusion from tier 1 capital of noncumulative perpetual preferred stock and non-voting common stock, even though these elements are included in GAAP equity and can fully absorb losses of the issuing BHC.

Several commenters indicated that investments in noncumulative perpetual preferred stock and non-voting common stock are often made by government-sponsored enterprises and large BHCs seeking to make community development investments in small banking organizations. These commenters noted that the non-voting feature is necessary to achieve the dual public goals of ensuring that such small community-focused banking organizations have adequate capital to enable them to continue making community development loans, while maintaining their control structures. Preservation of control is also needed for qualification under various legislative and regulatory programs designed for community development. In addition, commenters noted that, because of other legal and business factors, the investing government-sponsored enterprises and large BHCs want to avoid acquiring control of these small, community-focused BHCs.

The reasoning behind the Board's current and proposed standards on the inclusion of non-voting elements in tier 1 capital, which have been in place since 1989 and continue to be appropriate, is that individuals having voting control over a BHC's chosen business strategies should have a substantial financial stake at risk from the success or failure of the BHC's activities. Supervisory experience over the years has shown that the absence of such an equity stake by those controlling a BHC's strategies and activities can give such owners an incentive for the BHC to pursue high-risk business strategies. Such behavior creates a moral hazard problem for the deposit insurance fund and the public because, while the banking organization may become profitable if the strategy succeeds, the deposit insurance fund and the public are left to deal with a failed banking organization if the strategy fails.

The Board has decided, as proposed, to retain in the final rule the standard that voting common stock should be the dominant form of a BHC's tier 1 capital. The final rule continues to caution that excessive non-voting elements generally will be reallocated to tier 2 capital. This language provides a limited degree of flexibility, principally for smaller community banking organizations, depending on the facts and circumstances of a particular situation. The Federal Reserve has exercised this flexibility in the past, for example, to aid compliance with the Board's voting common stock standard by small privately-held community banking organizations reaching $150 million in assets and becoming subject to the Board's risk-based capital requirements for the first time. Because of significant concerns about the possible effects on the safe and sound operation of a BHC if controlling parties do not have economic stakes in the BHC proportionate to their voting control, the Federal Reserve will, as a general matter, heighten its supervisory scrutiny of the corporate governance and financial strategies of BHCs when the predominance of voting common equity in tier 1 capital begins to erode.

Disallowed Terms for Instruments Included in Tier 1 Capital

Two institutions requested that BHCs be allowed to include moderate dividend step-ups in their tier 1 trust preferred securities. Currently, step-up features are not allowed in any tier 1 capital instrument or in tier 2 subordinated debt. These commenters stressed that allowing step-up features in capital instruments would allow BHCs to reduce their cost of capital and level the playing field with foreign bank competitors, almost all of which include step-up features in their tier 1 capital instruments (subject to the 15 percent limit on innovative instruments). As the commenters noted, limited step-ups are permitted for these instruments under the Sydney Agreement.

After considering these comments, the Board has decided to continue prohibiting step-up provisions in tier 1 capital instruments and tier 2 subordinated debt. Because such features provide the issuer with the incentive to redeem an instrument, step-ups change the economic nature of instruments from longer-term to shorter-term. The resulting short-term tenor of such capital instruments is inconsistent with the Board's view that regulatory capital should provide long-term, stable support to a BHC. This view is consistent with the market expectation that BHCs will almost always redeem such instruments on the step-up date to preserve market access for future capital raising initiatives. Basically, investors view a step-up provision as an informal commitment by a BHC issuer to call such securities at the time of the step up. Failure to honor this informal commitment to redeem could impair an institution's ability to continue issuing securities to the market.

Two BHCs asked the Board to eliminate its longstanding requirement for the presence of a call option in qualifying trust preferred securities included in tier 1 capital. This requirement was based on the market standard prevailing at the time trust preferred securities were approved for

inclusion in tier 1 capital. The market for trust preferred securities at that time was strictly retail but since has expanded to include institutional investors. Unlike retail investors, who tend to focus on yield, non-retail investors charge for call options because they give the issuer flexibility to call the instrument should interest rates decline or the institution's condition improve, allowing refinancing at a cheaper rate. Investors have no control over this option, which the BHC issuer is most likely to exercise just as the securities become more valuable in the hands of the investor.

The Board continues to believe that the flexibility call options provide to BHCs is beneficial from both a financial and supervisory perspective. This potential benefit to BHCs is reflected in the substantial rate reductions that BHCs with trust preferred securities issued in 1996 or 1997 have been able to achieve in the recent period of declining interest rates by redeeming their trust preferred securities and replacing them with new issuances at lower rates. Nonetheless, the Board does not require call provisions in perpetual preferred stock included in tier 1 capital, where they would be even more useful from the same financial and supervisory perspectives due to the perpetual nature of these instruments. For these reasons, as well as to accommodate the expansion of the investor base to include the institutional market, the Board will no longer require that qualifying trust preferred securities include call provisions.

Technical Requirements for the Underlying Junior Subordinated Debt and the Grandfathering Period for Noncompliant Issuances

A substantial number of commenters asked the Board to extend the effective date for conformance with the technical requirements for junior subordinated debt underlying trust preferred securities from May 31, 2004, as proposed, to the effective date of the final rule. The Board, in response to these comments, has decided to extend the grandfathering date for junior subordinated debt with nonconforming provisions, but satisfying certain grandfathering criteria, to April 15, 2005. The Board has determined that this extension of the grandfathering date is appropriate given the number of technical legal issues that were raised by commenters.

The Board's proposed rule, in general, would have clarified that the terms of junior subordinated debt must comply with the criteria applicable to tier 2 subordinated debt under the proposed rule as well as the Board's 1992 subordinated debt policy statement, 12 CFR 250.166, as supplemented by SR 92–37 (Oct. 15, 1992). However, acceleration of the junior subordinated debt after the nonpayment of interest for a period of 20 consecutive quarters would be permitted.

A substantial number of banking organizations and other commenters have provided detailed comment on the need for various additional provisions in the indentures governing junior subordinated debt and the trust agreements governing trust preferred securities. In particular, commenters requested clarification of the technical requirements related to the deferability, acceleration, and subordination terms of junior subordinated debt and trust preferred securities in light of the existing subordinated debt policy statement.

One issue upon which commenters sought Board clarification was the maximum permissible length of the deferral notice period provided in the terms of junior subordinated debt. The indentures for junior subordinated debt have prescribed various periods within which a BHC must provide notice to the trustee of its intention to defer interest on junior subordinated debt, which in turn enables the trustee to defer the payment of dividends on trust preferred securities. Because the requirement for a long notice period could impede a BHC from deferring dividends when it needs to do so, or when the Federal Reserve directs it to do so, the proposed rule would have restricted the notice period for deferral to no more than five business days from the payment date. In response to commenters' concern that this was too short a period and would interfere with widespread market practice, the final rule permits a deferral notice period of up to 15 business days before the payment date. This would allow, for example, a five-business-day notice to the trustee prior to the record date and a ten-business-day period between the record date and the payment date.

The proposed rule sought to ensure that the junior subordinated debt is subordinated to senior debt and other subordinated debt issued by the BHC. Commenters sought clarification in the final rule that junior subordinated debt does not have to be subordinated to, and can be pari passu with, trade accounts payable and other accrued liabilities arising in the ordinary course of business. This interpretation is consistent with the Board's subordinated debt policy statement; accordingly, junior subordinated debt may be pari passu with obligations to trade creditors. In addition, junior subordinated debt underlying one issuance of trust preferred securities may be pari passu with junior subordinated debt underlying another issue of trust preferred securities, just as an issue of perpetual preferred stock may be pari passu with another issuance of perpetual preferred stock. In addition, the terms of junior subordinated debt may provide that it may be senior to, or pari passu with, deeply subordinated capital instruments that the Federal Reserve may in the future authorize for inclusion in tier 1 capital.

Some commenters sought clarification about whether junior subordinated debt needs to be subordinated to senior obligations (and senior only to common and preferred stock) with regard not only to priority of payment in a BHC's bankruptcy, but also to priority of interest payments while a BHC is a going concern. If a BHC has a non-deferrable debt that is subordinated in right of payment to its junior subordinated debt, the BHC could not defer payment on its deferrable junior subordinated debt without causing an event of default on its non-deferrable subordinated debt, thereby undermining the ability of the junior subordinated debt to absorb losses on an ongoing basis. Accordingly, junior subordinated debt must not be senior in liquidation, or in the priority of payment of periodic interest, to non-deferrable debt.

Some commenters sought clarification of the permissibility of indenture provisions that prohibit interest deferral on junior subordinated debt if a default event has occurred. Such provisions are permissible only if the event of default is one that is authorized to trigger the acceleration of principal and interest under the final rule. Thus, an indenture provision that prohibits deferral upon a default that arises from failure to follow the proper deferral process or upon any other event of default that the final rule does not allow to trigger acceleration is unacceptable.

Commenters concurred with the proposal to allow the acceleration of principal and interest on junior subordinated debt in the event of the voluntary or involuntary bankruptcy of a BHC, but sought clarification of the acceptability in junior subordinated debt indentures of other acceleration events. Consistent with the 1992 interpretation of the subordinated debt policy statement set forth in SR 92–37, junior subordinated debt also may accelerate in the event that a major bank subsidiary of the BHC goes into receivership. Junior subordinated debt also may accelerate if the trust issuing the trust preferred securities goes into

bankruptcy or is dissolved, unless the junior subordinated notes have been redeemed or distributed to the trust preferred securities investors or the obligation is assumed by a successor to the BHC.

The Board notes that it generally is also permissible for perpetual preferred stock to provide voting rights to investors upon the non-payment of dividends, or for junior subordinated debt and trust preferred securities to provide voting rights to investors upon the deferral of interest and dividends, respectively. However, these clauses conferring voting rights may contain only customary provisions, such as the ability to elect one or two directors to the board of the BHC issuer, and may not be so adverse as to create a substantial disincentive for the banking organization to defer interest and dividends when necessary or prudent.

Small BHC Policy Statement

In the preamble of the proposed rule, the Board solicited comment on certain clarifications that it may make either by rulemaking or through supervisory guidance to the treatment of qualifying trust preferred securities issued by small BHCs (that is, BHCs with consolidated assets of less than $150 million) under the Small Bank Holding Company Policy Statement. The policy generally exempts small BHCs from the Board's risk-based capital and leverage capital guidelines. Instead, small BHCs generally apply the risk-based capital and leverage capital guidelines on a bank-only basis and must only meet a debt-to-equity ratio at the parent BHC level.

One approach discussed in the proposal was generally to treat the subordinated debt associated with trust preferred securities issued by small BHCs as debt for most purposes under the Small BHC Policy Statement (other than the 12-year debt reduction and 25-year debt retirement standards), except that an amount of subordinated debt up to 25 percent of a small BHC's GAAP total stockholders' equity, net of goodwill, would be considered as neither debt nor equity. This approach would result in a treatment for trust preferred securities issued by BHCs subject to the Small BHC Policy Statement that would be more in line with the treatment of these securities that the Board is finalizing for larger BHCs subject to the Federal Reserve's risk-based capital guidelines.

Commenters made two recommendations. The first was that the Board should analyze more thoroughly the potential effect of the proposed revisions on small BHCs. The second comment was that the Board should provide for a transition period of at least five years at a minimum. The Board intends to issue supervisory guidance on this matter in the near future.

Regulatory Flexibility Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Board has determined that this final rule does not have a significant impact on a substantial number of small entities in accordance with the spirit and purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Board has determined that this final rule does not have a significant impact on a substantial number of small banking organizations because the vast majority of small banking organizations are not subject to the final rule, are already in compliance with the final rule, or will readily come into compliance with the final rule within the five-year transition period.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR part 1320 Appendix A.1.), the Board has reviewed this final rule under the authority delegated to the Board by the Office of Management and Budget. The Board has determined that this final rule does not contain a collection of information pursuant to the Paperwork Reduction Act.

Plain Language

Section 722 of the Gramm-Leach-Bliley Act of 1999 requires the use of ''plain language'' in all proposed and final rules published after January 1, 2000. The Board invited comments on whether the proposed rule was written in ''plain language'' and how to make the proposed rule easier to understand. No commenter indicated that the proposed rule should be revised to make it easier to understand. The final rule is substantially similar to the proposed rule, and the Board believes the final rule is written plainly and clearly.

List of Subjects

12 CFR Part 208

Accounting, Agriculture, Banks, Banking, Confidential business information, Crime, Currency, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 225

Administrative practice and procedure, Banks, Banking, Holding companies, Reporting and recordkeeping requirements, Securities.

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

■ 1. The authority citation of part 208 continues to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1823(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1831w, 1831x, 1835a, 1882, 2901–2907, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o–4(c)(5), 78q, 78q–1, and 78w; 31 U.S.C. 5318, 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

Appendix A to Part 208—[Amended]

■ 2. In Appendix A to part 208, remove Attachments II and III.

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

■ 3. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(l), 3106, 3108, 3310, 3331–3351, 3907, and 3909; 15 U.S.C. 6801 and 6805.

■ 4. Amend Appendix A to part 225 as follows:

■ a. In section II:

■ i. Designate the three undesignated paragraphs as paragraphs (i), (ii), and (iii) and revise newly redesignated paragraphs (i), (ii) and (iii).

■ ii. Remove footnote 8 [Reserved]; redesignate footnotes 9, 10, and 11 as footnotes 13, 14, and 15 respectively; and redesignate footnotes 14 through 61 as footnotes 17 through 64 respectively.

■ b. In section II.A., revise the heading.

■ c. Revise section II.A.1.

■ d. In section II.A.2.,

■ i. Revise the heading.

■ ii. Revise paragraph b and newly redesignated footnote 15.

■ iii. Revise paragraph d. and add new footnote 16.

■ e. In section II.B.2., add a sentence at the end of newly redesignated footnote 19.

■ f. In section III.C.2., revise newly redesignated footnotes 40 and 41.

■ g. Remove Attachments II and III.

Appendix A to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure

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II. Definition of Qualifying Capital for the Risk-Based Capital Ratio

(i) A banking organization's qualifying total capital consists of two types of capital components: ''core capital elements'' (tier 1 capital elements) and ''supplementary capital

elements'' (tier 2 capital elements). These capital elements and the various limits, restrictions, and deductions to which they are subject, are discussed below. To qualify as an element of tier 1 or tier 2 capital, an instrument must be fully paid up and effectively unsecured. Accordingly, if a banking organization has purchased, or has directly or indirectly funded the purchase of, its own capital instrument, that instrument generally is disqualified from inclusion in regulatory capital. A qualifying tier 1 or tier 2 capital instrument must be subordinated to all senior indebtedness of the organization. If issued by a bank, it also must be subordinated to claims of depositors. In addition, the instrument must not contain or be covered by any covenants, terms, or restrictions that are inconsistent with safe and sound banking practices.

(ii) On a case-by-case basis, the Federal Reserve may determine whether, and to what extent, any instrument that does not fit wholly within the terms of a capital element set forth below, or that does not have the characteristics or the ability to absorb losses commensurate with the capital treatment specified below, will qualify as an element of tier 1 or tier 2 capital. In making such a determination, the Federal Reserve will consider the similarity of the instrument to instruments explicitly addressed in the guidelines; the ability of the instrument to absorb losses, particularly while the organization operates as a going concern; the maturity and redemption features of the instrument; and other relevant terms and factors.

(iii) The redemption of capital instruments before stated maturity could have a significant impact on an organization's overall capital structure. Consequently, an organization should consult with the Federal Reserve before redeeming any equity or other capital instrument included in tier 1 or tier 2 capital prior to stated maturity if such redemption could have a material effect on the level or composition of the organization's capital base. Such consultation generally would not be necessary when the instrument is to be redeemed with the proceeds of, or replaced by, a like amount of a capital instrument that is of equal or higher quality with regard to terms and maturity and the Federal Reserve considers the organization's capital position to be fully sufficient.

A. The Definition and Components of Qualifying Capital

1. *Tier 1 capital.* Tier 1 capital generally is defined as the sum of core capital elements less any amounts of goodwill, other intangible assets, interest-only strips receivables, deferred tax assets, nonfinancial equity investments, and other items that are required to be deducted in accordance with section II.B. of this appendix. Tier 1 capital must represent at least 50 percent of qualifying total capital.

a. *Core capital elements (tier 1 capital elements).* The elements qualifying for inclusion in the tier 1 component of a banking organization's qualifying total capital are:

i. Qualifying common stockholders' equity;

ii. Qualifying noncumulative perpetual preferred stock (including related surplus);

iii. Minority interest related to qualifying common or noncumulative perpetual preferred stock directly issued by a consolidated U.S. depository institution or foreign bank subsidiary (Class A minority interest); and

iv. Restricted core capital elements. The aggregate of these items is limited within tier 1 capital as set forth in section II.A.1.b. of this appendix. These elements are defined to include:

(1) Qualifying cumulative perpetual preferred stock (including related surplus);

(2) Minority interest related to qualifying cumulative perpetual preferred stock directly issued by a consolidated U.S. depository institution or foreign bank subsidiary (Class B minority interest);

(3) Minority interest related to qualifying common stockholders' equity or perpetual preferred stock issued by a consolidated subsidiary that is neither a U.S. depository institution nor a foreign bank (Class C minority interest); and

(4) Qualifying trust preferred securities.

b. *Limits on restricted core capital elements*—i. *Limits.* (1) The aggregate amount of restricted core capital elements that may be included in the tier 1 capital of a banking organization must not exceed 25 percent of the sum of all core capital elements, including restricted core capital elements, net of goodwill less any associated deferred tax liability. Stated differently, the aggregate amount of restricted core capital elements is limited to one-third of the sum of core capital elements, excluding restricted core capital elements, net of goodwill less any associated deferred tax liability.

(2) In addition, the aggregate amount of restricted core capital elements (other than qualifying mandatory convertible preferred securities [5]) that may be included in the tier 1 capital of an internationally active banking organization [6] must not exceed 15 percent of the sum of all core capital elements, including restricted core capital elements, net of goodwill less any associated deferred tax liability.

(3) Amounts of restricted core capital elements in excess of this limit generally may be included in tier 2 capital. The excess amounts of restricted core capital elements that are in the form of Class C minority interest and qualifying trust preferred securities are subject to further limitation within tier 2 capital in accordance with section II.A.2.d.iv. of this appendix. A banking organization may attribute excess amounts of restricted core capital elements first to any qualifying cumulative perpetual preferred stock or to Class B minority interest, and second to qualifying trust preferred securities or to Class C minority interest, which are subject to a tier 2 sublimit.

ii. *Transition.*

(1) The quantitative limits for restricted core capital elements set forth in sections II.A.1.b.i. and II.A.2.d.iv. of this appendix become effective on March 31, 2009. Prior to that time, a banking organization with restricted core capital elements in amounts that cause it to exceed these limits must consult with the Federal Reserve on a plan for ensuring that the banking organization is not unduly relying on these elements in its capital base and, where appropriate, for reducing such reliance to ensure that the organization complies with these limits as of March 31, 2009.

(2) Until March 31, 2009, the aggregate amount of qualifying cumulative perpetual preferred stock (including related surplus) and qualifying trust preferred securities that a banking organization may include in tier 1 capital is limited to 25 percent of the sum of the following core capital elements: qualifying common stockholders' equity, Qualifying noncumulative and cumulative perpetual preferred stock (including related surplus), qualifying minority interest in the equity accounts of consolidated subsidiaries, and qualifying trust preferred securities. Amounts of qualifying cumulative perpetual preferred stock (including related surplus) and qualifying trust preferred securities in excess of this limit may be included in tier 2 capital.

(3) Until March 31, 2009, internationally active banking organizations generally are expected to limit the amount of qualifying cumulative perpetual preferred stock (including related surplus) and qualifying trust preferred securities included in tier 1 capital to 15 percent of the sum of core capital elements set forth in section II.A.1.b.ii.2. of this appendix.

c. *Definitions and requirements for core capital elements*—i. *Qualifying common stockholders' equity.*

(1) *Definition.* Qualifying common stockholders' equity is limited to common stock; related surplus; and retained earnings, including capital reserves and adjustments for the cumulative effect of foreign currency translation, net of any treasury stock, less net unrealized holding losses on available-for-sale equity securities with readily determinable fair values. For this purpose, net unrealized holding gains on such equity securities and net unrealized holding gains (losses) on available-for-sale debt securities are not included in qualifying common stockholders' equity.

(2) *Restrictions on terms and features.* A capital instrument that has a stated maturity date or that has a preference with regard to liquidation or the payment of dividends is not deemed to be a component of qualifying common stockholders' equity, regardless of

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[5] Qualifying mandatory convertible preferred securities generally consist of the joint issuance by a bank holding company to investors of trust preferred securities and a forward purchase contract, which the investors fully collateralize with the securities, that obligates the investors to purchase a fixed amount of the bank holding company's common stock, generally in three years. A bank holding company wishing to issue mandatorily convertible preferred securities and include them in tier 1 capital must consult with the Federal Reserve prior to issuance to ensure that the securities' terms are consistent with tier 1 capital treatment.

[6] For this purpose, an internationally active banking organization is a banking organization that (1) as of its most recent year-end FR Y–9C reports total consolidated assets equal to $250 billion or more or (2) on a consolidated basis, reports total on-balance-sheet foreign exposure of $10 billion or more on its filings of the most recent year-end FFIEC 009 Country Exposure Report.

whether or not it is called common equity. Terms or features that grant other preferences also may call into question whether the capital instrument would be deemed to be qualifying common stockholders' equity. Features that require, or provide significant incentives for, the issuer to redeem the instrument for cash or cash equivalents will render the instrument ineligible as a component of qualifying common stockholders' equity.

(3) *Reliance on voting common stockholders' equity.* Although section II.A.1. of this appendix allows for the inclusion of elements other than common stockholders' equity within tier 1 capital, voting common stockholders' equity, which is the most desirable capital element from a supervisory standpoint, generally should be the dominant element within tier 1 capital. Thus, banking organizations should avoid over-reliance on preferred stock and nonvoting elements within tier 1 capital. Such nonvoting elements can include portions of common stockholders' equity where, for example, a banking organization has a class of nonvoting common equity, or a class of voting common equity that has substantially fewer voting rights per share than another class of voting common equity. Where a banking organization relies excessively on nonvoting elements within tier 1 capital, the Federal Reserve generally will require the banking organization to allocate a portion of the nonvoting elements to tier 2 capital.

ii. *Qualifying perpetual preferred stock.*

(1) *Qualifying requirements.* Perpetual preferred stock qualifying for inclusion in tier 1 capital has no maturity date and cannot be redeemed at the option of the holder. Perpetual preferred stock will qualify for inclusion in tier 1 capital only if it can absorb losses while the issuer operates as a going concern.

(2) *Restrictions on terms and features.* Perpetual preferred stock included in tier 1 capital may not have any provisions restricting the banking organization's ability or legal right to defer or waive dividends, other than provisions requiring prior or concurrent deferral or waiver of payments on more junior instruments, which the Federal Reserve generally expects in such instruments consistent with the notion that the most junior capital elements should absorb losses first. Dividend deferrals or waivers for preferred stock, which the Federal Reserve expects will occur either voluntarily or at its direction when an organization is in a weakened condition, must not be subject to arrangements that would diminish the ability of the deferral to shore up the banking organization's resources. Any perpetual preferred stock with a feature permitting redemption at the option of the issuer may qualify as tier 1 capital only if the redemption is subject to prior approval of the Federal Reserve. Features that require, or create significant incentives for the issuer to redeem the instrument for cash or cash equivalents will render the instrument ineligible for inclusion in tier 1 capital. For example, perpetual preferred stock that has a credit-sensitive dividend feature—that is, a dividend rate that is reset periodically based, in whole or in part, on the banking organization's current credit standing—generally does not qualify for inclusion in tier 1 capital.[7] Similarly, perpetual preferred stock that has a dividend rate step-up or a market value conversion feature—that is, a feature whereby the holder must or can convert the preferred stock into common stock at the market price prevailing at the time of conversion—generally does not qualify for inclusion in tier 1 capital.[8] Perpetual preferred stock that does not qualify for inclusion in tier 1 capital generally will qualify for inclusion in tier 2 capital.

(3) *Noncumulative and cumulative features.* Perpetual preferred stock that is noncumulative generally may not permit the accumulation or payment of unpaid dividends in any form, including in the form of common stock. Perpetual preferred stock that provides for the accumulation or future payment of unpaid dividends is deemed to be cumulative, regardless of whether or not it is called noncumulative.

iii. *Qualifying minority interest.* Minority interest in the common and preferred stockholders' equity accounts of a consolidated subsidiary (minority interest) represents stockholders' equity associated with common or preferred equity instruments issued by a banking organization's consolidated subsidiary that are held by investors other than the banking organization. Minority interest is included in tier 1 capital because, as a general rule, it represents equity that is freely available to absorb losses in the issuing subsidiary. Nonetheless, minority interest typically is not available to absorb losses in the banking organization as a whole, a feature that is a particular concern when the minority interest is issued by a subsidiary that is neither a U.S. depository institution nor a foreign bank. For this reason, this appendix distinguishes among three types of qualifying minority interest. Class A minority interest is minority interest related to qualifying common and noncumulative perpetual preferred equity instruments issued directly (that is, not through a subsidiary) by a consolidated U.S. depository institution[9] or foreign bank[10] subsidiary of a banking organization. Class A minority interest is not subject to a formal limitation within tier 1 capital. Class B minority interest is minority interest related to qualifying cumulative perpetual preferred equity instruments issued directly by a consolidated U.S. depository institution or foreign bank subsidiary of a banking organization. Class B minority interest is a restricted core capital element subject to the limitations set forth in section II.A.1.b.i. of this appendix, but is not subject to a tier 2 sub-limit. Class C minority interest is minority interest related to qualifying common or perpetual preferred stock issued by a banking organization's consolidated subsidiary that is neither a U.S. depository institution nor a foreign bank. Class C minority interest is eligible for inclusion in tier 1 capital as a restricted core capital element and is subject to the limitations set forth in sections II.A.1.b.i. and II.A.2.d.iv. of this appendix. Minority interest in small business investment companies, investment funds that hold nonfinancial equity investments (as defined in section II.B.5.b. of this appendix), and subsidiaries engaged in nonfinancial activities are not included in the banking organization's tier 1 or total capital if the banking organization's interest in the company or fund is held under one of the legal authorities listed in section II.B.5.b. of this appendix. In addition, minority interest in consolidated asset-backed commercial paper programs (ABCP) (as defined in section III.B.6. of this appendix) that are sponsored by a banking organization are not included in the organization's tier 1 or total capital if the organization excludes the consolidated assets of such programs from risk-weighted assets pursuant to section III.B.6. of this appendix.

iv. *Qualifying trust preferred securities.*

(1) A banking organization that wishes to issue trust preferred securities and include them in tier 1 capital must first consult with the Federal Reserve. Trust preferred securities are defined as undated preferred securities issued by a trust or similar entity sponsored (but generally not consolidated) by a banking organization that is the sole common equity holder of the trust. Qualifying trust preferred securities must allow for dividends to be deferred for at least twenty consecutive quarters without an event of default, unless an event of default leading to acceleration permitted under section II.A.1.c.iv.(2) has occurred. The required notification period for such deferral must be reasonably short, no more than 15 business days prior to the payment date. Qualifying trust preferred securities are otherwise subject to the same restrictions on terms and features as qualifying perpetual preferred stock under section II.A.1.c.ii.(2) of this appendix.

(2) The sole asset of the trust must be a junior subordinated note issued by the sponsoring banking organization that has a minimum maturity of thirty years, is subordinated with regard to both liquidation

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[7] Traditional floating-rate or adjustable-rate perpetual preferred stock (that is, perpetual preferred stock in which the dividend rate is not affected by the issuer's credit standing or financial condition but is adjusted periodically in relation to an independent index based solely on general market interest rates), however, generally qualifies for inclusion in tier 1 capital provided all other requirements are met.

[8] Traditional convertible perpetual preferred stock, which the holder must or can convert into a fixed number of common shares at a preset price, generally qualifies for inclusion in tier 1 capital provided all other requirements are met.

[9] U.S. depository institutions are defined to include branches (foreign and domestic) of federally insured banks and depository institutions chartered and headquartered in the 50 states of the United States, the District of Columbia, Puerto Rico, and U.S. territories and possessions. The definition encompasses banks, mutual or stock savings banks, savings or building and loan associations, cooperative banks, credit unions, and international banking facilities of domestic banks.

[10] For this purpose, a foreign bank is defined as an institution that engages in the business of banking; is recognized as a bank by the bank supervisory or monetary authorities of the country of its organization or principal banking operations; receives deposits to a substantial extent in the regular course of business; and has the power to accept demand deposits.

and priority of periodic payments to all senior and subordinated debt of the sponsoring banking organization (other than other junior subordinated notes underlying trust preferred securities). Otherwise the terms of a junior subordinated note must mirror those of the preferred securities issued by the trust.[11] The note must comply with section II.A.2.d. of this appendix and the Federal Reserve's subordinated debt policy statement set forth in 12 CFR 250.166[12] except that the note may provide for an event of default and the acceleration of principal and accrued interest upon (a) nonpayment of interest for 20 or more consecutive quarters or (b) termination of the trust without redemption of the trust preferred securities, distribution of the notes to investors, or assumption of the obligation by a successor to the banking organization.

(3) In the last five years before the maturity of the note, the outstanding amount of the associated trust preferred securities is excluded from tier 1 capital and included in tier 2 capital, where the trust preferred securities are subject to the amortization provisions and quantitative restrictions set forth in sections II.A.2.d.iii. and iv. of this appendix as if the trust preferred securities were limited-life preferred stock.

2. *Supplementary capital elements (tier 2 capital elements)* * * *

b. *Perpetual preferred stock.* Perpetual preferred stock (and related surplus) that meets the requirements set forth in section II.A.1.c.ii.(1) of this appendix is eligible for inclusion in tier 2 capital without limit.[15]

* * * * *

d. *Subordinated debt and intermediate-term preferred stock*—i. *Five-year minimum maturity.* Subordinated debt and intermediate-term preferred stock must have an original weighted average maturity of at least five years to qualify as tier 2 capital. If the holder has the option to require the issuer to redeem, repay, or repurchase the instrument prior to the original stated maturity, maturity would be defined, for risk-based capital purposes, as the earliest possible date on which the holder can put the instrument back to the issuing banking organization.

ii. *Other restrictions on subordinated debt.* Subordinated debt included in tier 2 capital must comply with the Federal Reserve's subordinated debt policy statement set forth in 12 CFR 250.166.[16] Accordingly, such subordinated debt must meet the following requirements:

(1) The subordinated debt must be unsecured.

(2) The subordinated debt must clearly state on its face that it is not a deposit and is not insured by a Federal agency.

(3) The subordinated debt must not have credit-sensitive features or other provisions that are inconsistent with safe and sound banking practice.

(4) Subordinated debt issued by a subsidiary U.S. depository institution or foreign bank of a bank holding company must be subordinated in right of payment to the claims of all the institution's general creditors and depositors, and generally must not contain provisions permitting debt holders to accelerate payment of principal or interest upon the occurrence of any event other than receivership of the institution. Subordinated debt issued by a bank holding company or its subsidiaries that are neither U.S. depository institutions nor foreign banks must be subordinated to all senior indebtedness of the issuer; that is, the debt must be subordinated at a minimum to all borrowed money, similar obligations arising from off-balance sheet guarantees and direct credit substitutes, and obligations associated with derivative products such as interest rate and foreign exchange contracts, commodity contracts, and similar arrangements. Subordinated debt issued by a bank holding company or any of its subsidiaries that is not a U.S. depository institution or foreign bank must not contain provisions permitting debt holders to accelerate the payment of principal or interest upon the occurrence of any event other than the bankruptcy of the bank holding company or the receivership of a major subsidiary depository institution. Thus, a provision permitting acceleration in the event that any other affiliate of the bank holding company issuer enters into bankruptcy or receivership makes the instrument ineligible for inclusion in tier 2 capital.

iii. *Discounting in last five years.* As a limited-life capital instrument approaches maturity, it begins to take on characteristics of a short-term obligation. For this reason, the outstanding amount of term subordinated debt and limited-life preferred stock eligible for inclusion in tier 2 capital is reduced, or discounted, as these instruments approach maturity: one-fifth of the outstanding amount is excluded each year during the instrument's last five years before maturity. When remaining maturity is less than one year, the instrument is excluded from tier 2 capital.

iv. *Limits.* The aggregate amount of term subordinated debt (excluding mandatory convertible debt) and limited-life preferred stock as well as, beginning March 31, 2009, qualifying trust preferred securities and Class C minority interest in excess of the limits set forth in section II.A.1.b.i. of this appendix that may be included in tier 2 capital is limited to 50 percent of tier 1 capital (net of goodwill and other intangible assets required to be deducted in accordance with section II.B.1.b. of this appendix). Amounts of these instruments in excess of this limit, although not included in tier 2 capital, will be taken into account by the Federal Reserve in its overall assessment of a banking organization's funding and financial condition.

B. * * *

2. * * *

a. * * * The aggregate amount of investments in banking or finance subsidiaries[19]

* * * * *

III. * * *

C. * * *

2. * * *

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[11] Under generally accepted accounting principles, the trust issuing the preferred securities generally is not consolidated on the banking organization's balance sheet; rather the underlying subordinated note is recorded as a liability on the organization's balance sheet. Only the amount of the trust preferred securities issued, which generally is equal to the amount of the underlying subordinated note less the amount of the sponsoring banking organization's common equity investment in the trust (which is recorded as an asset on the banking organization's consolidated balance sheet), may be included in tier 1 capital. Because this calculation method effectively deducts the banking organization's common stock investment in the trust in computing the numerator of the capital ratio, the common equity investment in the trust should be excluded from the calculation of risk-weighted assets in accordance with footnote 17 of this appendix. Where a banking organization has issued trust preferred securities as part of a pooled issuance, the organization generally must not buy back a security issued from the pool. Where a banking organization does hold such a security (for example, as a result of an acquisition of another banking organization), the amount of the trust preferred securities includable in regulatory capital must, consistent with section II.(i) of this appendix, be reduced by the notional amount of the banking organization's investment in the security issued by the pooling entity.

[12] Trust preferred securities issued before April 15, 2005, generally would be includable in tier 1 capital despite noncompliance with sections II.A.1.c.iv. or II.A.2.d. of this appendix or 12 CFR 250.166 provided the non-complying terms of the instrument (i) have been commonly used by banking organizations, (ii) do not provide an unreasonably high degree of protection to the holder in circumstances other than bankruptcy of the banking organization, and (iii) do not effectively allow a holder in due course of the note to stand ahead of senior or subordinated debt holders in the event of bankruptcy of the banking organization.

* * * * *

[15] Long-term preferred stock with an original maturity of 20 years or more (including related surplus) will also qualify in this category as an element of tier 2 capital. If the holder of such an instrument has the right to require the issuer to redeem, repay, or repurchase the instrument prior to the original stated maturity, maturity would be defined for risk-based capital purposes as the earliest possible date on which the holder can put the instrument back to the issuing banking organization. In the last five years before the maturity of the stock, it must be treated as limited-life preferred stock, subject to the amortization provisions and quantitative restrictions set forth in sections II.A.2.d.iii. and iv. of this appendix.

[16] The subordinated debt policy statement set forth in 12 CFR 250.166 notes that certain terms found in subordinated debt may provide protection to investors without adversely affecting the overall benefits of the instrument to the issuing banking organization and, thus, would be acceptable for subordinated debt included in capital. For example, a provision that prohibits a bank holding company from merging, consolidating, or selling substantially all of its assets unless the new entity redeems or assumes the subordinated debt or that designates the failure to pay principal and interest on a timely basis as an event of default would be acceptable, so long as the occurrence of such events does not allow the debt holders to accelerate the payment of principal or interest on the debt.

* * * * *

[19] * * * For purposes of this section, the definition of banking and finance subsidiary does not include a trust or other special purpose entity used to issue trust preferred securities.

a. * * * U.S. depository institutions [40] and foreign banks [41];* * *

* * * * *

■ 5. Amend Appendix D to part 225, as follows:

■ a. In section I.b., amend the first sentence by changing the phrase ''to consolidated basis'' to ''on a consolidated basis'' and the second sentence by changing the word ''that'' to ''than.''

■ b. In section II.b., remove footnote 3 and redesignate footnote 4 as footnote 3.

■ c. In section II.c., revise the second sentence.

Appendix to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Tier 1 Leverage Measure

* * * * *

II. * * *

c. * * * This is consistent with the Federal Reserve's risk-based capital guidelines and long-standing Federal Reserve policy and practice with regard to leverage guidelines. * * *

* * * * *

By order of the Board of Governors of the Federal Reserve System, March 4, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 05–4690 Filed 3–9–05; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE217; Special Conditions No. 23–156–SC]

Special Conditions: AMSAFE, Incorporated; Mooney Models M20K, M20M, M20R, and M20S; Inflatable Three-Point Restraint Safety Belt With an Integrated Airbag Device

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the installation of an AMSAFE, Inc., Inflatable Three-Point Restraint Safety Belt with an Integrated Airbag Device on Mooney models M20K, M20M, M20R, and M20S. These airplanes, as modified by AMSAFE, Inc., will have novel and unusual design features associated with the lap belt portion of the safety belt, which contains an integrated airbag device. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Effective February 25, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Mark James, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 901 Locust, Kansas City, Missouri, 816–329–4137, fax 816–329–4090, e-mail: *mark.james@faa.gov.*

SUPPLEMENTARY INFORMATION

Background

On April 13, 2004, AMSAFE, Inc., Aviation Inflatable Restraints Division, 1043 North 47th Avenue, Phoenix, AZ 85043, applied for a supplemental type certificate for the installation of an inflatable lap belt restraint with a standard upper torso restraint (or shoulder harness) in Mooney models M20 (K, M, R, and S). The Mooney models M20 (K, M, R, and S) are single-engine, multiplace airplanes.

The inflatable restraint system is a three-point safety belt restraint system consisting of a traditional shoulder harness and an inflatable airbag lap belt. The inflatable portion of the restraint system will rely on sensors to electronically activate the inflator for deployment. The inflatable restraint system will be made available on the pilot, copilot, and passenger seats of these airplanes.

In an emergency landing, the airbag will inflate and provide a protective cushion between the occupant's head and structure within the airplane. This will reduce the potential for head and torso injury. The inflatable restraint behaves in a manner that is similar to an automotive airbag, but in this case, the airbag is integrated into the lap belt. While airbags and inflatable restraints are standard in the automotive industry, the use of an inflatable three-point restraint system is novel for general aviation operations.

The FAA has determined that this project will be accomplished by providing the same level of safety as the current Mooney models M20 (K, M, R, and S). The FAA has two primary safety concerns with the installation of airbags or inflatable restraints:

- That they perform properly under foreseeable operating conditions; and
- That they do not perform in a manner or at such times as to impede the pilot's ability to maintain control of the airplane or constitute a hazard to the airplane or occupants.

The latter point has the potential to be the more rigorous of the requirements. An unexpected deployment while conducting the takeoff or landing phases of flight may result in an unsafe condition. The unexpected deployment may either startle the pilot or generate a force sufficient to cause a sudden movement of the control yoke. Either action could result in a loss of control of the airplane, the consequences of which are magnified due to the low operating altitudes during these phases of flight. The FAA has considered this when establishing these special conditions.

The inflatable restraint system relies on sensors to electronically activate the inflator for deployment. These sensors could be susceptible to inadvertent activation, causing deployment in a potentially unsafe manner. The consequences of an inadvertent deployment must be considered in establishing the reliability of the system. AMSAFE, Inc., must show either that the effects of an inadvertent deployment in flight are not a hazard to the airplane or that an inadvertent deployment is extremely improbable. In addition, general aviation aircraft are susceptible to a large amount of cumulative wear and tear on a restraint system. The potential for inadvertent deployment may increase as a result of this cumulative damage. Therefore, the impact of wear and tear on inadvertent deployment must be considered. Due to the effects of this cumulative damage, a life limit must be established for the appropriate system components in the restraint system design.

There are additional factors to be considered to minimize the chances of inadvertent deployment. General aviation airplanes are exposed to a unique operating environment, since the same airplane may be used by both experienced and student pilots. The effect of this environment on inadvertent deployment must be understood. Therefore, qualification testing of the firing hardware/software must consider the following:

* * * * *

[40] *See* footnote 9 of this appendix for the definition of a U.S. depository institution. For this purpose, the definition also includes U.S.-chartered depository institutions owned by foreigners. However, branches and agencies of foreign banks located in the U.S., as well as all bank holding companies, are excluded.

[41] *See* footnote 10 of this appendix for the definition of a foreign bank. Foreign banks are distinguished as either OECD banks or non-OECD banks. OECD banks include banks and their branches (foreign and domestic) organized under the laws of countries (other than the United States) that belong to the OECD-based group of countries. Non-OECD banks include banks and their branches (foreign and domestic) organized under the laws of countries that do not belong to the OECD-based group of countries.

• The airplane vibration levels appropriate for a general aviation airplane; and

• The inertial loads that result from typical flight or ground maneuvers, including gusts and hard landings.

Any tendency for the firing mechanism to activate as a result of these loads or acceleration levels is unacceptable.

Other influences on inadvertent deployment include high intensity electromagnetic fields (HIRF) and lightning. Since the sensors that trigger deployment are electronic, they must be protected from the effects of these threats. To comply with HIRF and lightning requirements, the AMSAFE, Inc., inflatable restraint system is considered a critical system, since its inadvertent deployment could have a hazardous effect on the airplane.

Given the level of safety of the current Mooney M20 occupant restraints, the inflatable restraint system must show that it will offer an equivalent level of protection in an emergency landing. In an inadvertent deployment, the restraint must still be at least as strong as a Technical Standard Order approved belt and shoulder harness. There is no requirement for the inflatable portion of the restraint to offer protection during multiple impacts, where more than one impact would require protection.

The inflatable restraint system must deploy and provide protection for each occupant under a crash condition. The seats of the models M20 (K, M, R, and S) are not certificated to the requirements of § 23.562, and it is not known if they would remain intact following exposure to the crash pulse identified in § 23.562. Therefore, the test crash pulse used to satisfy this requirement may have a peak longitudinal deceleration lower than that required by § 23.562. However, the test pulse onset rate (deceleration divided by time) must be equal to or greater than the onset rate of the pulse described in § 23.562. This will demonstrate that the crash sensor will trigger when exposed to a rapidly applied deceleration, like an actual crash event.

It is possible a wide range of occupants will use the inflatable restraint. Thus, the protection offered by this restraint should be effective for occupants that range from the fifth percentile female to the ninety-fifth percentile male. Energy absorption must be performed in a consistent manner for this occupant range.

To support this operational capability, there must be a means to verify the integrity of this system before each flight. AMSAFE, Inc., may establish inspection intervals where they have demonstrated the system to be reliable between these intervals.

An inflatable restraint may be ''armed'' even though no occupant is using the seat. While there will be means to verify the integrity of the system before flight, unoccupied seats with active restraints should not constitute a hazard to any occupant. This will protect any individual performing maintenance inside the cockpit while the aircraft is on the ground. The restraint must also provide suitable visual warnings that would alert rescue personnel to the presence of an inflatable restraint system.

In addition, the design must prevent the inflatable seatbelt from either being incorrectly buckled or installed such that the airbag would not properly deploy, or both. As an alternative, AMSAFE, Inc., may show that such deployment is not hazardous to the occupant and will still provide the required protection.

The cabins of the Mooney model airplanes identified in these special conditions are confined areas, and the FAA is concerned that noxious gasses may accumulate in an airbag deployment. When deployment does occur, either by design or inadvertently, there must not be a release of hazardous quantities of gas or particulate matter into the cockpit.

An inflatable restraint should not increase the risk already associated with fire. Therefore, the inflatable restraint should be protected from the effects of fire so that an additional hazard is not created by, for example, a rupture of the inflator.

Finally, the airbag is likely to have a large volume displacement and possibly impede the egress of an occupant. Since the bag deflates to absorb energy, the inflatable restraint would probably be deflated at the time an occupant would attempt egress. However, it is appropriate to specify a time interval after which the inflatable restraint may not impede rapid egress. Ten seconds has been chosen as reasonable time. This time limit will offer a level of protection throughout the impact.

Type Certification Basis

Under the provisions of § 21.101, AMSAFE, Inc., must show that the Mooney models M20 (K, M, R, and S), as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. 2A3 or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate No. 2A3 are as follows:

Mooney M20K

Model M20K (Serial Number 25–0001 through 25–2012) See Note 21 below (from Type Certificate Data Sheet). Civil Air Regulations (CAR) 3, effective November 1, 1949, as amended to May 18, 1954, with paragraph 3.74 of Amendment 3–13 dated August 25, 1955; CAR 3 effective May 15, 1956, as amended to October 1, 1959, paragraphs 3.109, 3.112, 3.115, 3.118, 3.120, and 3.441; in lieu of corresponding CAR 3 paragraphs, where applicable—14 CFR Part 23, effective February 1, 1965, as amended to September 14, 1969; §§ 23.33, 23.901 through 23.953, §§ 23.955 through 23.963, §§ 23.967 through 23.1047, §§ 23.1121 through 23.1193, §§ 23.1351 through 23.1401, § 23.1527, § 23.1553, as amended to June 17, 1970; §§ 23.1441 through 23.1449, as amended to February 1, 1977; §§ 23.1091 through 23.1105, as amended March 1, 1978; §§ 23.29; 14 CFR part 36, effective September 20, 1976.

Model M20K (Serial Number 25–2013 and on) See Note 21 below (from Type Certificate Data Sheet). Civil Air Regulations (CAR) 3, effective November 1, 1949, as amended to May 18, 1954, with paragraph 3.74 of Amendment 3–13; CAR 3 effective May 15, 1956, as amended to October 1, 1959, paragraphs 3.109, 3.112, 3.115, 3.118, 3.120, and 3.441; in lieu of corresponding CAR 3 paragraphs, where applicable—14 CFR part 23, effective February 1, 1965; § 23.33, §§ 23.901 through 23.953, §§ 23.955 through 23.963, §§ 23.967 through 23.1047, §§ 23.1121 through 23.1193, §§ 23.1351 through 23.1401, § 23.1527, § 23.1553 of Amendment 23–7; §§ 23.1441 through 23.1449 of Amendment 23–9; §§ 23.1091 through 23.1105 of Amendment 23–17; § 23.1301 of Amendment 23–20; § 23.29 of Amendment 23–21; § 23.1529 of Amendment 23–26; §§ 23.45 through 23.77 of Amendment 23–34; § 23.1587 of Amendment 23–45; §§ 23.1323 and 23.1325 of Amendment 23–42; 14 CFR part 36, latest amendment at time of certification.

Note 21: M20K S/N's 25–2000 through 25–2012 may be retrofitted to TSIO–360–SB2 engine and gross weight increase to 3130 lbs. when complied with M20K Gross Weight Increase Retrofit Instructions.

Mooney M20M

Model M20 Civil Air Regulations (CAR) 3, effective November 1, 1949, as

amended to May 18, 1954, paragraph 3.74, as amended to August 25, 1955; paragraphs 3.109, 3.112, 3.115, 3.118, 3.120, and 34.441 of CAR 3, effective May 15, 1956, as amended to October 1, 1959. In lieu of corresponding CAR 3 paragraphs, where applicable—14 CFR part 23, effective February 1, 1965; § 23.29, as amended to March 1, 1978; § 23.33, as amended to September 14, 1969; §§ 23.901 through 23.953, §§ 23.955 through 23.963, §§ 23.967 through 23.1063, as amended to September 14, 1969; §§ 23.1091 through 23.1105, as amended to February 1, 1977; §§ 23.1121 through 23.1193, §§ 23.1351 through 23.1399, as amended to September 14, 1969; §§ 23.1401, as amended to August 11, 1971; §§ 23.1441 through 23.1449, as amended to June 17, 1970; § 23.1521, as amended to December 1, 1978; § 23.1525; § 23.1527, as amended to September 14, 1969; §§ 23.1545, 23.1549, 23.1553, as amended to December 1, 1978; § 23.1557, as amended to December 20, 1973; § 23.1559, as amended to March 1, 1978; § 23.1563, as amended to September 14, 1969; § 23.1583, as amended to December 1, 1978; 14 CFR part 36, effective September 20, 1976, as amended to December 22, 1988.

Mooney M20R

Model M20R Civil Air Regulations (CAR) 3, effective November 1, 1949, as amended to May 18, 1954, paragraph 3.74, as amended to August 25, 1955; paragraphs 3.109, 3.112, 3.115, 3.118, 3.120, and 34.441 of CAR 3, effective May 15, 1956; as amended to October 1, 1959. In lieu of corresponding CAR 3 paragraphs, where applicable—14 CFR part 23, effective February 1, 1965; § 23.29, as amended to March 1, 1978; § 23.33, as amended to September 14, 1969; §§ 23.901 through 23.953, §§ 23.955 through 23.963, §§ 23.967 through 23.1063, as amended to September 14, 1969; §§ 23.1091 through 23.1105, as amended to February 1, 1977; §§ 23.1121 through 23.1193, §§ 23.1351 through 23.1399, as amended to September 14, 1969; § 23.1401, as amended to August 11, 1971; §§ 23.1441 through 23.1449, as amended to June 17, 1970; § 23.1521, as amended to December 1, 1978; § 23.1525; §§ 23.1527, as amended to September 14, 1969; §§ 23.1545, 23.1549, and 23.1553, as amended to December 1, 1978; §§ 23.1557, as amended to December 20, 1973; § 23.1559, as amended to March 1, 1978; § 23.1563, as amended to September 14, 1969; § 23.1583, as amended to December 1, 1978; 14 CFR part 36, effective September 20, 1976, as amended to December 22, 1988.

Mooney M20S

Model M20S Civil Air Regulations (CAR) 3, effective November 1, 1949, as amended May 18, 1954; except for paragraph 3.74 amended August 25, 1955; paragraph 3.109, .112, .115, .118, .120, and .441 of CAR 3, effective May 15, 1956, as amended October 1, 1959; and in lieu of corresponding CAR 3 paragraphs, where applicable—14 CFR part 23, effective February 1, 1965: Section 23.29, as amended by Amendment 23–21, dated March 1, 1978; §§ 23.33, dated September 14, 1969; §§ 23.45 through 23.77, as amended by Amendment 23–34, dated January 15, 1987; §§ 23.777, as amended by Amendment 23–7, dated September 14, 1969; §§ 23.901 through 23.953, §§ 23.955 through 23.963, §§ 23.967 through 23.1063, as amended by Amendment 23–7, dated September 14, 1969; §§ 23.1091 through 23.1105, as amended by Amendment 23–17, dated February 1, 1977; §§ 23.1121 through 23.1193, §§ 23.1351 through 23.1399, as amended by Amendment 23–7, dated September 14, 1969; § 23.1311, as amended by Amendment 23.49, dated March 11, 1996; § 23.1337(b), as amended by Amendment 23–7, dated September 14, 1969; § 23.1401, as amended by Amendment 23–11, dated August 11, 1971; §§ 23.1441 through 23.1449, as amended by Amendment 23–9, dated June 17, 1970; § 23.1521, as amended by Amendment 23–21, March 1, 1978; §§ 23.1525 and 23.1527, as amended by Amendment 23–7, dated September 14, 1969; § 23.1529, as amended by Amendment 23–26, dated October 14, 1980; §§ 23.1545, 23.1549, and 23.1553, as amended by Amendment 23–23, dated December 1, 1978; § 23.1555(a), as amended by Amendment 23–7, dated September 14, 1969; § 23.1557, as amended by Amendment 23–14, dated December 20, 1973; § 23.1559, as amended by Amendment 23–21, dated March 1, 1978; § 23.1563, as amended by Amendment 23–7, dated September 14, 1969; §§ 23.1581 through 23.1589, as amended by Amendment 23–34, dated January 15, 1987; 14 CFR part 36, effective September 20, 1976, the current amendment in effect at date of certification; and Equivalent.

For the models listed above, the certification basis also includes all exemptions, if any; equivalent level of safety findings, if any; and the special conditions adopted by this rulemaking action.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* part 23 as amended) do not contain adequate or appropriate safety standards for the AMSAFE, Inc., inflatable restraint as installed on these Mooney models because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to that model under the provisions of § 21.101.

Novel or Unusual Design Features

The Mooney models M20 (K, M, R, and S) will incorporate the following novel or unusual design feature:

The AMSAFE, Inc., Inflatable Three-Point Restraint Safety Belt with an Integrated Airbag Device. The purpose of the airbag is to reduce the potential for injury in an accident. In a severe impact, an airbag will deploy from the lap belt portion of the restraint, in a manner similar to an automotive airbag. The airbag will deploy between the head of the occupant and airplane interior structure. This will, therefore, provide some protection to the head of the occupant. The restraint will rely on sensors to electronically activate the inflator for deployment.

The Code of Federal Regulations state performance criteria for seats and restraints in an objective manner. However, none of these criteria are adequate to address the specific issues raised concerning inflatable restraints. Therefore, the FAA has determined that, in addition to the requirements of part 21 and part 23, special conditions are needed to address the installation of this inflatable restraint.

Accordingly, these special conditions are adopted for the Mooney models M20 (K, M, R, and S) equipped with the AMSAFE, Inc., three-point inflatable restraint system. Other conditions may be developed, as needed, based on further FAA review and discussions with the manufacturer and civil aviation authorities.

Discussion of Comments

Notice of proposed special conditions No. 23–05–01–SC for the Mooney models M20 (K, M, R, and S) equipped with the AMSAFE, Inc., three-point inflatable restraint system was

published on January 19, 2005 (70 FR 2977). No comments were received.

Applicability

As discussed above, these special conditions are applicable to the Mooney models M20 (K, M, R, and S) equipped with the AMSAFE, Inc., three-point inflatable restraint system. Should AMSAFE, Inc., apply at a later date for a supplemental type certificate to modify any other model on the Type Certificates identified in these special conditions to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on the Mooney models M20 (K, M, R, and S). It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.101; and 14 CFR 11.38 and 11.19.

The Special Conditions

■ The FAA has determined that this project will be accomplished on the basis of not lowering the current level of safety for the Mooney models M20 (K, M, R, and S) occupant restraint system. Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Mooney models M20 (K, M, R, and S), as modified by AMSAFE, Inc.

Inflatable Three-Point Restraint Safety Belt with an Integrated Airbag Device on Mooney Models M20 (K, M, R, and S).

1. It must be shown that the inflatable restraint will deploy and provide protection under crash conditions. Compliance will be demonstrated using the dynamic test condition specified in § 23.562, which may be modified as follows:

a. The peak longitudinal deceleration may be reduced; however, the onset rate of the deceleration must be equal to or greater than the crash pulse identified in § 23.562.

b. The peak longitudinal deceleration must be above the deployment threshold of the crash sensor and equal to or greater than the forward static design longitudinal load factor required by the original certification basis of the airplane.

c. The means of protection must take into consideration a range of stature from a 5th percentile female to a 95th percentile male. The inflatable restraint must provide a consistent approach to energy absorption throughout the range.

2. The inflatable restraint must provide adequate protection for each occupant. In addition, unoccupied seats that have an active restraint must not constitute a hazard to any occupant.

3. The design must prevent the inflatable restraint from either being incorrectly buckled or incorrectly installed, or both, such that the airbag would not properly deploy. Alternatively, it must be shown that such deployment is not hazardous to the occupant and will provide the required protection.

4. It must be shown that the inflatable restraint system is not susceptible to inadvertent deployment as a result of wear and tear or the inertial loads resulting from in-flight or ground maneuvers (including gusts and hard landings) that are likely to be experienced in service.

5. It must be extremely improbable for an inadvertent deployment of the restraint system to occur, or an inadvertent deployment must not impede the pilot's ability to maintain control of the airplane or cause an unsafe condition (or hazard to the airplane). In addition, a deployed inflatable restraint must be at least as strong as a Technical Standard Order (C114) certificated belt and shoulder harness.

6. It must be shown that deployment of the inflatable restraint system is not hazardous to the occupant and will not result in injuries that could impede rapid egress. This assessment should include occupants whose restraint is loosely fastened.

7. It must be shown that an inadvertent deployment that could cause injury to a standing or sitting person is improbable. In addition, the restraint must also provide suitable visual warnings that would alert rescue personnel to the presence of an inflatable restraint system.

8. It must be shown that the inflatable restraint will not impede rapid egress of the occupants 10 seconds after its deployment.

9. For the purposes of complying with HIRF and lightning requirements, the inflatable restraint system is considered a critical system since its deployment could have a hazardous effect on the airplane.

10. It must be shown that the inflatable restraints will not release hazardous quantities of gas or particulate matter into the cabin.

11. The inflatable restraint system installation must be protected from the effects of fire such that no hazard to occupants will result.

12. There must be a means to verify the integrity of the inflatable restraint activation system before each flight or it must be demonstrated to reliably operate between inspection intervals.

13. A life limit must be established for appropriate system components.

14. Qualification testing of the internal firing mechanism must be performed at vibration levels appropriate for a general aviation airplane.

Issued in Kansas City, Missouri on February 25, 2005.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–4649 Filed 3–9–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE219, Special Condition No. 23–159–SC]

Special Conditions: Cessna Aircraft Company; EFIS on the Cessna 172R and 172S; Protection of Systems for High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Cessna Aircraft Company, Model 172R and 172S airplanes. These airplanes, as modified by Cessna Aircraft Company, will have a novel or unusual design feature(s) associated with the installation of a Garmin G1000 electronic flight instrument system (EFIS) and the protection of this system from the effects of high intensity radiated field (HIRF) environments. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is March 2, 2005.

Comments must be received on or before April 11, 2005.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. marked: Docket No. CE219. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Wes Ryan, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4127.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments, as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. CE219.'' The postcard will be date stamped and returned to the commenter.

Background

On January 28, 2004, Cessna Aircraft Company; One Cessna Boulevard; Post Office Box 7704; Wichita, KS 67277, made an application to the FAA for an amended type certificate for the Cessna 172R and 172S. The 172R and 172S are currently approved under TC No. 3A12. The proposed modification incorporates a novel or unusual design feature, such as digital avionics consisting of an EFIS that may be vulnerable to HIRF external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.101, Cessna Aircraft Company must show that the Cessna Model 172R and 172S meet the following provisions or the applicable provisions in effect on the date of application for type certification of the Cessna 172R and 172S.

For the 172R Series:

14 CFR part 23 of the Federal Aviation Regulations effective February 1, 1965, as amended by 23–1 through 23–6, except as follows: Sec. 23.423; 23.611; 23.619; 23.623; 23.689; 23.775; 23.871; 23.1323; and 23.1563 as amended by Amendment 23–7. Sections 23.807 and 23.1524 as amended by Amendment 23–10. Sections 23.507; 23.771; 23.853(a), (b) and (c); and 23.1365 as amended by Amendment 23–14. Section 23.951 as amended by Amendment 23–15. Sections 23.607; 23.675; 23.685; 23.733; 23.787; 23.1309 and 23.1322 as amended by Amendment 23–17. Section 23.1301 as amended by Amendment 23–20. Section 23.1353; and 23.1559 as amended by Amendment 23–21. Sections 23.603; 23.605; 23.613; 23.1329 and 23.1545 as amended by Amendment 23–23. Sections 23.441 and 23.1549 as amended by Amendment 23–28. Sections 23.779 and 23.781 as amended by Amendment 23–33. Sections 23.1; 23.51 and 23.561 as amended by Amendment 23–34. Sections 23.301; 23.331; 23.351; 23.427; 23.677; 23.701; 23.735; and 23.831 as amended by Amendment 23–42. Sections 23.961; 23.1093; 23.1143(g); 23.1147(b); 23.1303; 23.1357; 23.1361 and 23.1385 as amended by Amendment 23–43. Sections 23.562(a), 23.562(b)2, 23.562(c)1, 23.562(c)2, 23.562(c)3, and 23.562(c)4 as amended by Amendment 23–44. Sections 23.33; 23.53; 23.305; 23.321; 23.485; 23.621; 23.655 and 23.731 as amended by Amendment 23–45. 14 CFR part 36 dated December 1, 1969, as amended by Amendments 36–1 through 36–21, additional certification requirements applied to the G1000 system itself, such as 23.1309 and 23.1311 as amended by Amendment 23–49, 23.1321 as amended by Amendment 23–41, and 23.1322 as amended by Amendment 23–43, exemptions, if any; and the special conditions adopted by this rulemaking action.

For the 172S series:

14 CFR part 23 effective February 1, 1965, as amended by 23–1 through 23–6, except as follows: Sections 23.423; 23.611; 23.619; 23.623; 23.689; 23.775; 23.871; 23.1323; and 23.1563 as amended by Amendment 23–7. Sections 23.807 and 23.1524 as amended by Amendment 23–10. Sections 23.507; 23.771; 23.853(a), (b) and (c); and 23.1365 as amended by Amendment 23–14. Section 23.951 as amended by Amendment 23–15. Sections 23.607; 23.675; 23.685; 23.733; 23.787; 23.1309 and 23.1322 as amended by Amendment 23–17. Section 23.1301 as amended by Amendment 23–20. Sections 23.1353; and 23.1559 as amended by Amendment 23–21. Sections 23.603; 23.605; 23.613; 23.1329 and 23.1545 as amended by Amendment 23–23. Sections 23.441 and 23.1549 as amended by Amendment 23–28. Sections 23.779 and 23.781 as amended by Amendment 23–33. Sections 23.1; 23.51 and 23.561 as amended by Amendment 23–34. Sections 23.301; 23.331; 23.351; 23.427; 23.677; 23.701; 23.735; and 23.831 as amended by Amendment 23–42. Sections 23.961; 23.1093; 23.1143(g); 23.1147(b); 23.1303; 23.1357; 23.1361 and 23.1385 as amended by Amendment 23–43. Sections 23.562(a), 23.562(b)2, 23.562(c)1, 23.562(c)2, 23.562(c)3, and 23.562(c)4 as amended by Amendment 23–44. Sections 23.33; 23.53; 23.305; 23.321; 23.485; 23.621; 23.655 and 23.731 as amended by Amendment 23–45. 14 CFR part 36 dated December 1, 1969, as amended by Amendments 36–1 through 36–21, additional certification requirements applied to the G1000 system itself, such as 23.1309 and 23.1311 as amended by Amendment 23–49, 23.1321 as amended by Amendment 23–41, and 23.1322 as amended by Amendment 23–43, exemptions, if any; and the special conditions adopted by this rulemaking action.

Discussion

If the Administrator finds that the applicable airworthiness standards do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38 after public notice and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

The Cessna Model 172R and Model 172S will incorporate the following novel or unusual design features: A Garmin G1000 electronic flight instrument system (EFIS) including a primary flight display on the pilot side as well as a multifunction display in the center of the instrument panel.

Protection of Systems From High Intensity Radiated Fields (HIRF): Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid-state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined below:

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak root-mean-square (rms) values.

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter, electrical field strength, from 10 kHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant for approval by the FAA to identify either electrical or electronic systems that perform critical functions. The term ''critical'' means those functions, whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Applicability

As discussed above, these special conditions are applicable to the Cessna 172R and 172S airplanes. Should the Cessna Aircraft Company apply at a later date to modify any other model on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.17; and 14 CFR 11.38 and 11.19.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Cessna 172R and 172S airplanes modified by the Cessna Aircraft Company to add the Garmin G1000 EFIS system.

1. *Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF).* Each system that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri on March 2, 2005.

Nancy C. Lane,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–4745 Filed 3–9–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–27–AD; Amendment 39–14002; AD 2005–05–13]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT9D–59A, –70A, –7Q, and –7Q3 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for Pratt & Whitney (PW) JT9D–59A, –70A, –7Q, and –7Q3 turbofan engines. That AD currently requires fluorescent penetrant inspection (FPI) of high pressure turbine (HPT) second stage airseals, part numbers (P/Ns) 5002537–01, 788945, 753187, and 807410, knife-edges for cracks, each time the engine's HPT second stage airseal is accessible. This AD requires replacing each existing HPT second stage airseal with an improved design HPT second stage airseal and modifying the 2nd stage HPT vane cluster assembly and 1st stage retaining blade HPT plate assembly at next piece-part exposure, but no later than five years after the effective date of this AD. These actions are considered terminating action to the repetitive inspections required by AD 2002–10–07. This AD results from the manufacturer introducing an improved design HPT second stage airseal and modifications to increase cooling. We are issuing this AD to prevent failure of the HPT second stage airseal due to cracks in the knife-edges, which if not detected, could result in uncontained engine failure and damage to the airplane.

DATES: This AD becomes effective April 14, 2005. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of April 14, 2005.

ADDRESSES: You can get the service information identified in this AD from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8770; fax (860) 565–4503.

You may examine the AD docket and the service information at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Kevin Donovan, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01887–5299; telephone (781) 238–7743; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR Part 39 with a proposed AD. The proposed AD applies to PW JT9D–59A, –70A, –7Q, and –7Q3 turbofan engines. We published the proposed AD in the **Federal Register** on July 7, 2004 (69 FR 40819). That action proposed to require replacing each existing HPT second stage airseal with an improved design HPT second stage airseal and modifying the 2nd stage HPT vane cluster assembly and 1st stage retaining blade HPT plate assembly at next piece-part exposure, but no later than five years after the effective date of the proposed AD. These actions would be considered terminating action to the repetitive inspections required by AD 2002–10–07.

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Request To Keep AD 2002–10–07 as an Alternative Means of Compliance

One commenter requests that the existing AD, which is AD 2002–10–07, be kept as an alternative means of compliance. The commenter states that the compliance of the proposed AD, as per the Accomplishment Instructions of PW Service Bulletin (SB) No. JT9D 6454, Revision 1, not only requires replacement of the HPT second stage turbine airseal, but also requires replacement and modification of many other parts. Since all of the parts of the HPT module are required to be exposed to piece-parts during overhaul, and not at any other time, the compliance statement which states ''At the next piece-part exposure'' should be amended to ''At the next HPT Module overhaul'', as also stated in SB No. JT9D 6454, Revision 1.

We do not agree. AD 2002–10–07 was introduced solely as an interim action, with the intent of the redesign being the final solution. We are issuing this AD to prevent failure of the HPT second stage airseal due to cracks in the knife-edges, which if not detected, could result in uncontained engine failure and damage to the airplane. Therefore we do not feel that the AD 2002–10–07 interim action provides an equivalent level of safety. In addition, there are times such as an unscheduled maintenance event, in which the HPT module hardware will be exposed. It is our intention to incorporate this AD at the next piece-part exposure.

Proposal for an Alternative Management Plan

One commenter proposes an alternative management plan to the compliance section in the proposed AD, subject to the provisions in the proposed AD. The commenter provided the details of the proposed management plan to us in a separate document. The background to the proposed plan is as follows:

HPT second stage airseals, P/Ns 5002537–01, 788945, 753187, and 807410, have very high scrap rates. About 75% of airseals are scrapped after

fluorescent penetrant inspection (FPI). Only those airseals passing FPI which are reinstalled, will continue to have a risk of knife-edge cracking. Limiting those airseals to 2,000 cycles-in-service, maximum, before a repeat FPI is required, will increase the detection rate when compared to AD 2002–10–07.

We do not agree. The purpose of AD 2002–10–07 was to serve as an interim action until PW provided a new design part. Since the new design part is available, we feel it is in the interest of public safety to replace the part at the earliest opportunity and prevent any failure of the HPT second stage airseal, which if not detected, could result in uncontained engine failure and damage to the airplane.

Request To Clarify Piece-Part Exposure

One commenter requests clarification of the term ''piece-part exposure'' and suggests changing the term to ''piece-part level''.

We agree to clarify the term ''piece-part exposure''. We have added a definition that states that for the purposes of this AD, piece-part exposure means the HPT second stage airseal disk is considered completely disassembled, when done in accordance with the disassembly instructions in the engine manufacturer's, or other FAA-approved engine manual.

Request for AD To Reflect the Latest Service Bulletin Compliance, and To Clarify That New Parts Can Also Be Installed

One commenter, PW, states the following:

''The compliance requirements specified in the proposed AD are more stringent than what is recommended in the compliance section of SB No. JT9D 6454. Compliance with the proposed AD would require operators to incorporate the SB coincidental with module repair (piece-part exposure), which could occur well in advance of HPT module overhaul as defined in the SB. Although the proposed AD compliance requirement may seem prudent with regards to added conservatism, the SB recommendation is based on an industry-accepted methodology for the assessment of risk for future uncontained failures. A key variable in performing the risk analysis is the incorporation rate. The rate applied that satisfies PW's risk criteria, was in fact based on a typical HPT overhaul interval range. No consideration was given for piece-part exposure during a premature module repair or a specific ''hard-time'' incorporation date. Recognizing the FAA's desire to mandate a compliance date, PW reviewed the incorporation rate as it relates to a five-year compliance period and estimates 95% incorporation based on a typical overhaul interval, while incorporation at a six-year threshold captures 98.4% of the population.

In summary:

The AD should reflect compliance as defined in PW SB No. 6454, having a compliance date of 6 years as imposed by the FAA.

Service Bulletin No. JT9D –6454 has been revised since the proposed AD was issued, adding additional airflow data to the turbine rotor nozzle and ring assembly airflow test procedure. The AD should reflect SB No. JT9D 6454, Revision 2.

Wording throughout the proposed AD implies that compliance can only be achieved through modification of existing second stage vane clusters, and first stage blade retaining plates. The proposed AD should recognize that all parts required to accomplish the intent of SB No. JT9D 6454 are also available as new, from PW and modification of serviceable parts may be optional as specified in the SB.''

We summarize the comment as follows:

It is PW's technical opinion that the incorporation of SB No. JT9D 6454 before HPT module overhaul, would create an unnecessary burden on operators. It is also PW's technical opinion that the compliance period should be extended to six years to capture a greater percentage of the population so not to create unnecessary financial burden on lower utilization operators.

We partially agree. The purpose of AD 2002–10–07 was to serve as an interim action until PW provided a new design part. Since the new design for this part is now available, we feel it is an item of public safety to replace the part as a closing action for this AD and prevent an uncontained engine failure and damage to the airplane. We are referencing the latest revision of the SB, which is Revision 3, in the AD.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

There are about 564 PW JT9D–59A, –70A, –7Q, and –7Q3 turbofan engines of the affected design in the worldwide fleet. We estimate that 176 engines installed on airplanes of U.S. registry will be affected by this AD. We also estimate that it will take approximately 210 work hours per engine to perform the actions, and that the average labor rate is $65 per work hour. Required parts will cost approximately $117,696 per engine. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $23,116,896.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''AD Docket No. 2001–NE–17–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–12753 (67 FR 12753, May 23, 2002) and by adding a new airworthiness directive, Amendment 39–14002, to read as follows:

2005–05–13 Pratt & Whitney: Amendment 39–14002. Docket No. 2001–NE–27–AD.

Effective Date

(a) This AD becomes effective April 14, 2005.

Affected ADs

(b) This AD supersedes AD 2002–10–07, Amendment 39–12753.

Applicability

(c) This AD applies to Pratt & Whitney (PW) JT9D–59A, –70A, –7Q, and –7Q3 turbofan engines with high pressure turbine (HPT) second stage airseal, part number (P/N) 5002537–01, 788945, 753187, or 807410, installed. These engines are installed on, but not limited to, Airbus Industrie A300 series, Boeing 747 series, and McDonnell Douglas DC–10 series airplanes.

Unsafe Condition

(d) This AD results from the manufacturer introducing an improved design HPT second stage airseal and modifications to increase cooling. We are issuing this AD to prevent failure of the HPT second stage airseal due to cracks in the knife-edges, which if not detected, could result in uncontained engine failure and damage to the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

Replacement of HPT Second Stage Airseal

(f) At the next piece-part exposure, but no later than five years after the effective date of this AD, replace the HPT second stage airseal with a P/N HPT second stage airseal that is not listed in this AD, and modify the 2nd stage HPT vane cluster assembly and 1st stage retaining blade HPT plate assembly. Use the Accomplishment Instructions of PW Service Bulletin No. JT9D 6454, Revision 3, dated November 9, 2004, to do this.

Definition

(g) For the purposes of this AD, piece-part exposure means the HPT second stage airseal disk is considered completely disassembled, when done in accordance with the disassembly instructions in the engine manufacturer's, or other FAA-approved engine manual.

Alternative Methods of Compliance

(h) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(i) You must use Pratt & Whitney Service Bulletin No. JT9D 6454, Revision 3, dated November 9, 2004, to perform the replacement and modification required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You can get a copy from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8770; fax (860) 565–4503. You can review copies at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Related Information

(j) None.

Issued in Burlington, Massachusetts, on March 2, 2005.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 05–4562 Filed 3–9–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19897; Directorate Identifier 2004–CE–45–AD; Amendment 39–14003; AD 2005–05–14]

RIN 2120–AA64

Airworthiness Directives; Eagle Aircraft (Malaysia) Sdn. Bhd. Model Eagle 150B Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for certain Eagle Aircraft (Malaysia) Sdn. Bhd. Model Eagle 150B airplanes. This AD requires you to modify or replace the co-pilot rudder pedal assembly. This AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Malaysia. We are issuing this AD to prevent binding of the co-pilot rudder pedal assembly due to premature wear of the bushing, which could result in loss of co-pilot rudder and brake control. This failure could result in loss of control of the airplane.

DATES: This AD becomes effective on April 22, 2005.

As of April 22, 2005, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: To get the service information identified in this AD, contact Eagle Aircraft (Malaysia) Sdn. Bhd., PO Box 1028, Pejabat Pos Besar, Melaka, Malaysia, 75150; telephone: 011 (606) 317–4105; facsimile: 011 (606) 317–7213. To review this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* or call (202) 741–6030.

To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov.* The docket number is FAA–2004–19897; Directorate Identifier 2004–CE–45–AD.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, Small Airplane Directorate, ACE–112, 901 Locust, Rm 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4149.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The Department of Civil Aviation, Malaysia (DCA), which is the airworthiness authority for Malaysia, recently notified FAA that an unsafe condition may exist on certain Eagle Aircraft Sdn. Bhd. Model Eagle 150B airplanes. The DCA reports two incidents of the co-pilot rudder pedal assembly, part number (P/N) 2720D07–02, binding and becoming inoperable during flight.

Investigation revealed that the two incidents resulted from premature wear of the bushing, P/N 2720D08–39, in the co-pilot rudder pedal assembly. Premature wear of the bushing allowed

it to slide of out the housing resulting in excessive play between the co-pilot rudder pedal assembly and the shaft. That condition caused the co-pilot rudder control pushrod pivot, P/N 2720D08–31/04, to bind with the co-pilot pivot arms, P/N 2720D08–42.

Stronger material is used now to manufacture the bushing and it has also been improved by including side stoppers.

What is the potential impact if FAA took no action? If not corrected, binding of the co-pilot rudder pedal assembly could result in loss of co-pilot rudder and brake control. This failure could result in loss of control of the airplane.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Eagle Aircraft (Malaysia) Sdn. Bhd. Model Eagle 150B airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on January 12, 2005 (70 FR 2070). The NPRM proposed to require you to modify or replace the co-pilot rudder pedal assembly.

Comments

Was the public invited to comment? We provided the public the opportunity to participate in developing this AD. We received no comments on the proposal or on the determination of the cost to the public.

Conclusion

What is FAA's final determination on this issue? We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Changes to 14 CFR Part 39—Effect on the AD

How does the revision to 14 CFR part 39 affect this AD? On July 10, 2002, the FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

How many airplanes does this AD impact? We estimate that this AD affects 13 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the modification:

Labor hours	Parts cost	Total cost per airplane
4 work hours × $65 per hour = $260. Eagle Aircraft has agreed to reimburse for the cost of labor.	Eagle Aircraft has agreed to provide the parts without cost.	Not applicable.

We estimate the following costs to accomplish the replacements:

Labor cost	Parts cost	Total cost per airplane
3 work hours × $65 per hour = $195	$1,440	$1,635

Authority for This Rulemaking

What authority does FAA have for issuing this rulemaking action? Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this AD.

Regulatory Findings

Will this AD impact various entities? We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Will this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''Docket No. FAA–2004–19897; Directorate Identifier 2004–CE–45–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new AD to read as follows:

2005–05–14 Eagle Aircraft (Malaysia) Sdn. Bhd.: Amendment 39–14003; Docket No. FAA–2004–19897; Directorate Identifier 2004–CE–45–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on April 22, 2005.

What Other ADs Are Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects Model Eagle 150B airplanes, manufacturer serial numbers (MSN) 016 through 042, that are:

(1) Equipped with a co-pilot rudder pedal assembly welded design, part number (P/N) 2720D07–02; and

(2) Certificated in any category.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Malaysia. The actions specified in this AD are intended to prevent binding of the co-pilot rudder pedal assembly due to premature wear of the bushing, which could result in loss of co-pilot rudder and brake control. This failure could result in loss of control of the airplane.

What Must I Do To Address This Problem?

(e) To address this problem, you must do the following, unless already done:

Actions	Compliance	Procedures
(1) Inspect the co-pilot rudder pedal assembly welded design, part number (P/N) 272ODO7–02, for cracks. (i) If cracks are found replace the assembly with a new bolted design co-pilot rudder pedal assembly, P/N 2720D07–10. (ii) If no cracks are found, either: (A) Modify P/N 2720D07–02 by replacing the rudder control bushing with a new P/N 2720D08–39 and installing a rudder control stopper, P/N 2720D08–44; or. (B) Replace P/N 2720D07–02 with a new bolted design co-pilot rudder pedal assembly, P/N 2720D07–10.	Inspect within 30 days after April 22, 2005 (the effective date of this AD). If cracks are found during the inspection, before further flight replace the rudder pedal assembly. If no cracks are found during the inspection, before further flight, modify or replace the rudder pedal assembly.	To inspect and modify the rudder pedal assembly, follow Eagle Aircraft Optional Service Bulletin SB 1096, dated September 16, 2003. To replace the rudder pedal assembly, follow Eagle Aircraft Optional Service Bulletin SB 1097, dated September 16, 2003.
(2) Do not install a co-pilot rudder pedal assembly, P/N 2720D07–02, unless it has been inspected and modified as required in paragraphs (e)(1) and (e)(1)(ii)(A) of this AD.	As of April 22, 2005 (the effective date of this AD).	Not applicable.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Karl Schletzbaum, Aerospace Engineer, Small Airplane Directorate, ACE–112, 901 Locust, Rm 301, Kansas City, Missouri, 64106; telephone: (816) 329–4146; facsimile: (816) 329–4149.

What if I Need To Fly the Airplane to Another Location to Comply With This AD?

(g) The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD provided that the following is adhered to:

(1) Remove the co-pilot rudder pedal assembly, P/N 2720D07–02, from installation following Eagle Aircraft Mandatory Service Bulletin SB 1095, dated September 16, 2003; and

(2) Install a temporary placard in a visible place on the instrument panel that has the following wording: ''WARNING: CO-PILOT RUDDER PEDAL IS NON-FUNCTIONAL.''

Is There Other Information That Relates to This Subject?

(h) Malaysia CAM AD 002–10–2004, Issue date: October 30, 2004, also addresses the subject of this AD.

Does This AD Incorporate Any Material by Reference?

(i) You must do the actions required by this AD following the instructions in Eagle Aircraft Optional Service Bulletin SB 1096, dated September 16, 2003; and Eagle Aircraft Optional Service Bulletin SB 1097, dated September 16, 2003. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get a copy of this service information, contact Eagle Aircraft, P.O. Box 1028, Pejabat Pos Besar, Melaka, Malaysia, 75150; telephone: 011 (606) 317–4105; facsimile: 011 (606) 317–7213. To review copies of this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* or call (202) 741–6030. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov.* The docket number is FAA–2004–19897; Directorate Identifier 2004–CE–45–AD.

Issued in Kansas City, Missouri, on March 2, 2005.

Nancy C. Lane,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–4554 Filed 3–9–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–34–AD; Amendment 39–13998; AD 2005–05–09]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and –145 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain EMBRAER Model EMB–135 and –145 series airplanes. This AD requires modification of the

mid, aft, and forward upper liners in the baggage compartment. The modification involves replacing the plastic lens protection grids on all upper liners with new, light metal lens protection grids. This AD is necessary to prevent the plastic lens protection grids from breaking away and exposing the lens as a source of fire, which could lead to fire damage to the aircraft systems and structure, and expose the passengers and crew to hazardous quantities of smoke. This action is intended to address the identified unsafe condition.

DATES: Effective April 14, 2005.

The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of April 14, 2005.

ADDRESSES: The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–135 and –145 series airplanes was published in the **Federal Register** on December 17, 2003 (68 FR 70204). That action proposed to require modification of the mid, aft, and forward upper liners in the baggage compartment. The modification would involve replacing the plastic lens protection grids on all upper liners with new, light metal lens protection grids.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Supportive Comment

One commenter supports the proposed AD.

Request To Include Additional Service Information

One commenter notes that the proposed AD requires the installation of modified cargo liners in accordance with EMBRAER Service Bulletin 145–25–0168, Change 02, dated August 8, 2000. The commenter states that EMBRAER Service Bulletin 145–25–0133, Change 01 and subsequent, include similar instructions for installing those same modified cargo liners. The commenter suggests that the proposed AD be revised to indicate that actions accomplished previously in accordance with EMBRAER Service Bulletin 145–25–0133, Change 01 and subsequent, are acceptable for compliance with the corresponding requirement of the proposed AD.

The commenter points out that C&D Aerospace Service Bulletin 145–20216–25–03, Revision 2, dated June 9, 2000, which is included in EMBRAER Service Bulletin 145–25–0168, Change 02, includes a note stating that, for airplanes having S/Ns 004/0118 and 0120/0133, accomplishing C&D Service Bulletin 145–20216–25–03 is not required if an operator has accomplished the actions included in EMBRAER Service Bulletin 145–25–0133. The commenter recommends that paragraphs (a) and (b) of the proposed AD be revised to reference EMBRAER Service Bulletin 145–25–0133, Change 01 and subsequent, and C&D Aerospace Service Bulletin 145–20216–25–01. C&D Aerospace Service Bulletin 145–20216–25–01 is included in EMBRAER Service Bulletin 145–25–0133.

We do not agree to refer to ''Change 01 and subsequent'' of EMBRAER Service Bulletin 145–25–0133, or C&D Aerospace Service Bulletin 145–20216–25–01, in paragraphs (a) and (b) of this AD. We have reviewed EMBRAER Service Bulletin 145–25–0133, Change 06, dated October 20, 2003, and determined that additional actions are required for operators who have accomplished the actions specified in that service bulletin. (Change 06 is the current revision level of that service bulletin.) We have determined that EMBRAER Service Bulletin 145–25–0133 includes only procedures for removing existing baggage compartment liners, installing new baggage compartment liners, and installing the service bulletin incorporation placard. EMBRAER Service Bulletin 145–25–0168 includes procedures for modifying the existing baggage compartment liners and installing the service bulletin incorporation placard.

We also point out that the transmittal letter for EMBRAER Service Bulletin 145–25–0133, Change 06, includes the following statement: ''Aircraft that have complied with previous issue of this Bulletin need additional action per SB 145–25–0168.'' Under the provisions of paragraph (d) of this AD, operators may request an alternative method of compliance for work accomplished in accordance with the Accomplishment Instructions of any change level of EMBRAER Service Bulletin 145–25–0133. We have not changed this AD regarding this issue.

Conclusion

We have carefully reviewed the available data, including the comments that have been submitted, and determined that air safety and the public interest require adopting the AD as proposed.

Cost Impact

We estimate that 160 airplanes of U.S. registry will be affected by this AD, that it will take approximately 7 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Parts will be provided by the manufacturer at no charge. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $72,800, or $455 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for

safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2005–05–09 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–13998. Docket 2003–NM–34–AD.

Applicability: Model EMB–135 and –145 series airplanes, certificated in any category, having serial numbers (S/Ns) 145004 through 145187 inclusive, S/Ns 145191 through 145196 inclusive, S/N 145200, and S/N 145204.

Compliance: Required as indicated, unless accomplished previously.

To prevent the plastic lens protection grids in the baggage compartment from breaking away and exposing the lens as a source of fire, which could lead to fire damage to the aircraft systems and structure, and expose the passengers and crew to hazardous quantities of smoke, accomplish the following:

Note 1: EMBRAER Service Bulletin 145–25–0168, Change 02, dated August 8, 2000, references C&D Aerospace Service Bulletin 145–20216–25–03, Revision 2, dated June 9, 2000, as an additional source of service information for accomplishment of the modification. The C&D Aerospace service bulletin is included within the EMBRAER service bulletin.

Modification

(a) Within 2,000 flight hours after the effective date of this AD: Modify the mid, aft, and forward, baggage compartment upper liners to replace the plastic lens protection grids on all upper liners with new, light metal lens protection grids, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145–25–0168, Change 02, dated August 8, 2000.

Actions Accomplished Previously

(b) Modifications to the cargo liners accomplished before the effective date of this AD in accordance with EMBRAER Service Bulletin 145–25–0168, Change 01, dated April 13, 2000, are considered acceptable for compliance with the corresponding actions specified in this AD.

Parts Installation

(c) As of the effective date of this AD, no person may install on any airplane a smoke detector cover having part number 7161119–507, or a ceiling panel having part number 7161011–507, 7161011–517, 7161011–519, 7161011–523, 7161011–525, 7161011–527, 7161011–529, 7161011–531, or 7161011–533.

Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(e) Unless otherwise specified in this AD, the actions must be done in accordance with EMBRAER Service Bulletin 145–25–0168, Change 02, dated August 8, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Note 2: The subject of this AD is addressed in Brazilian airworthiness directive 2000–06–01, dated July 3, 2000.

Effective Date

(f) This amendment becomes effective on April 14, 2005.

Issued in Renton, Washington, on February 28, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–4551 Filed 3–9–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16596; Airspace Docket No. 03–ASO–20]

Amendment of Class D, E2 and E4 Airspace; Columbus Lawson AAF, GA, and Class E5 Airspace; Columbus, GA; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to the final rule (FAA–2003–16596; 03–ASO–20), which was published in the **Federal Register** on March 23, 2004 (69 FR 13467), amending Class E5 airspace at Columbus, GA. This action changes the Lawson 127° localizer (LOC) course to the 145° LOC course.

EFFECTIVE DATE: 0901 UTC, May 12, 2005.

FOR FURTHER INFORMATION CONTACT: Mark D. Ward, Manager, Airspace and Operations Branch, Air Traffic Division, Federal Aviation Administration, PO Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Background

Federal Register Document 04–6380, Docket No. FAA–2003–16596; Airspace Docket 03–ASO–20, published on March 23, 2004 (69 FR 13467), amends Class E5 airspace at Columbus, GA, as a result of the relocation of the Lawson Army Airfield (AAF) Instrument Landing System (ILS) and the extension of Runway (RWY) 15–33. This action corrects the published docket.

Designations for Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, which

is incorporated by reference in 14 CFR 71.1. The Class E designation listed in this document will be published subsequently in the Order.

Need for Correction

As published, the final rule contains an error that incorrectly identifies the LOC course for the Lawson AAF ILS RWY 33 Standard Instrument Approach Procedure (SIAP). Accordingly, pursuant to the authority delegated to me, the legal description for the Class E5 airspace area at Columbus, GA, incorporated by reference at § 71.1, 14 CFR 71.1, and published in the **Federal Register** on March 23, 2004 (69 FR 13467), is corrected by making the following correcting amendment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

■ In consideration of the foregoing, the Federal Aviation Administration corrects the adopted amendment, 14 CFR part 71, by making the following correcting amendment:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Corrected]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO GA E5 Columbus, GA [Corrected]

Columbus Metropolitan Airport, GA
(Lat 32°30′59″ N, long. 84°56′20″ W)
Lawson AAF, GA
(Lat. 32°20′14″ N, long. 84°59′29″ W)
Lawson VOR/DME
(Lat. 32°19′57″ N, long. 84°59′36″ W)
Lawson LOC
(Lat. 32°20′43″ N, long. 84°59′55″ W)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Columbus Metropolitan Airport and within a 7.6-mile radius of Lawson AAF and within 2.5 miles each side of Lawson VOR/DME 340° radial, extending from the 7.6-mile radius to 15 miles north of the VOR/DME and within 4 miles each side of the Lawson LOC 145° course, extending from the 7.6-mile radius to 10.6 miles southeast of Lawson AAF.

* * * * *

Issued in College Park, Georgia on February 16, 2005.

Mark D. Ward,

Acting Area Director, Air Traffic Division, Southern Region.

[FR Doc. 05–4750 Filed 3–9–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19579; Airspace Docket No. 04–ACE–69]

Establishment of Class E2 Airspace; and Modification of Class E5 Airspace; Newton, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes a Class E surface area at Newton, KS. It also modifies the Class E airspace area extending upward from 700 feet above the surface at Newton, KS by correcting discrepancies in the extension to this airspace area.

The effect of this rule is to provide appropriate controlled Class E airspace for aircraft executing instrument approach procedures to Newton-City-County Airport and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: Effective 0901 UTC, May 12, 2005.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION:

History

On Friday, January 7, 2005, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a Class E surface area and to modify other Class E airspace at Newton, KS (70 FR 1399) and subsequently published a correction to the proposal on Wednesday, January 26, 2005 (70 FR 3656). The proposal was to establish a Class E surface area at Newton, KS. It was also to modify the Class E5 airspace and its legal description by correcting discrepancies in its extension. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to 14 CFR Part 71 establishes Class E airspace designated as a surface area for an airport at Newton, KS. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing instrument approach procedures to Newton-City-County Airport. Weather observations will be provided by an Automatic Weather Observing/Reporting System (AWOS) and communications will be direct with Wichita Terminal Radar Approach Control Facility.

This rule also revises the Class E airspace area extending upward from 700 feet above the surface at Newton, KS. An examination of this Class E airspace area for Newton, KS revealed discrepancies in its extension. This action corrects these discrepancies. The areas will be depicted on appropriate aeronautical charts.

Class E airspace areas designated as surface areas are published in Paragraph 6002 of FAA Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of the same Order. The Class E airspace designations listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulations—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority since it contains aircraft executing instrument approach procedures to Newton-City-County Airport.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ACE KS E2 Newton, KS

Newton-City-County Airport, KS
(Lat. 38°03′26″ N., long. 97°16′31″ W.)
Newton NDB
(Lat. 38°03′51″ N., long. 97°16′24″ W.)

Within a 4.2-mile radius of Newton-City-County Airport and within 2.5 miles each side of the 185° bearing from the Newton NDB extending from the 4.2-mile radius of the airport to 7 miles south of the NDB.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE KS E5 Newton, KS

Newton-City-County Airport, KS
(Lat. 38°03′26″ N., long. 97°16′31″ W.)
Newton NDB
(Lat. 38°03′51″ N., long. 97°16′24″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Newton-City-County Airport, and within 2.5 miles each side of the 185° bearing from the Newton NDB extending from the 6.7-mile radius of the airport to 7 miles south of the NDB.

* * * * *

Issued in Kansas City, MO, on March 1, 2005.

Rosalyn R. Ward,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 05–4651 Filed 3–9–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19580; Airspace Docket No. 04–ACE–70]

Establishment of Class E2 Airspace; and Modification of Class E5 Airspace; Ames, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes a Class E surface area at Ames, IA. It also modifies the Class E airspace area extending upward from 700 feet above the surface at Ames, IA by eliminating extensions to this airspace area.

The effect of this rule is to provide appropriate controlled Class E airspace for aircraft executing instrument approach procedures to Ames Municipal Airport and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: Effective 0901 UTC, May 12, 2005.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION:

History

On Friday, January 7, 2005, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a Class E surface area and to modify other Class E airspace at Ames, IA (70 FR 1397). The proposal was to establish a Class E surface area at Ames, IA. It was also to modify the Class E5 airspace area to bring it into compliance with FAA directives. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to 14 CFR Part 71 establishes Class E airspace designated as a surface area for an airport at Ames, IA. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing instrument approach procedures to Ames Municipal Airport. Weather observations will be provided by an Automatic Surface Observing System (ASOS) and communications will be direct with Des Moines Terminal Radar Approach Control Facility.

This rule also revises the Class E airspace area extending upward from 700 feet above the surface at Ames, IA. An examination of this Class E airspace area for Ames, IA revealed discrepancies in its dimensions. The airspace extensions are eliminated, airspace is defined of appropriate dimensions to protect aircraft departing and executing instrument approach procedures to Ames Municipal Airport and the airspace area is brought into compliance with FAA directives. Both areas will be depicted on appropriate aeronautical charts.

Class E airspace areas designated as surface areas are published in Paragraph 6002 of FAA Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of the same Order. The Class E airspace designations listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority since it contains aircraft executing instrument approach procedures to Ames Municipal Airport.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ACE IA E2 Ames, IA

Ames Municipal Airport, IA
(Lat. 41°59′31″ N., long. 93°37′19″ W.)

Within a 4.1-mile radius of Ames Municipal Airport and within 1.8 miles each side of the 197° bearing from the airport extending from the 4.1-mile radius to 4.9 miles south of the airport.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Ames, IA

Ames Municipal Airport, IA
(Lat. 41°59′31″ N., long. 93°37′19″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Ames Municipal Airport.

* * * * *

Issued in Kansas City, MO, on March 1, 2005.

Rosalyn R. Ward,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 05–4652 Filed 3–9–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19581; Airspace Docket No. 04–ACE–71]

Establishment of Class E2 Airspace; and Modification of Class E5 Airspace; Ankeny, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes a Class E surface area at Ankeny, IA. It also modifies the Class E airspace area extending upward from 700 feet above the surface at Ankeny, IA.

The effect of this rule is to provide appropriate controlled Class E airspace for aircraft departing from and executing instrument approach procedures to Ankeny Regional Airport and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: *Effective* 0901 UTC, May 12, 2005.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, January 19, 2005, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a Class E surface area and to modify other Class E airspace at Ankeny, IA (70 FR 2991) and subsequently published a correction to the proposal on Monday, February 7, 2005 (70 FR 6378). The proposal was to bring Ankeny, IA airspace areas into compliance with FAA directives. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace designated as a surface area for an airport at Ankeny, IA. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing instrument approach procedures to Ankeny Regional Airport. Weather observations will be provided by an Automatic Weather Observing/Reporting System (AWOS) and communications will be direct with Des Moines Terminal Radar Approach Control Facility.

This rule also revises the Class E airspace area extending upward from 700 feet above the surface at Ankeny, IA. An examination of this airspace area revealed there is inadequate controlled airspace to protect for diverse departures. The examination also identified that the north extension is unnecessary and the northeast extension does not comply with FAA airspace directives. These discrepancies are corrected by expanding the area from a 7-mile to a 7.1-mile radius of Ankeny Regional Airport, eliminating the north extension, modifying the northeast extension and defining airspace of appropriate dimensions to protect aircraft departing and executing instrument approach procedures to Ankeny Regional Airport. The airspace area is brought into compliance with FAA Orders 7400.2E, Procedures for Handling Airspace Matters, and 8260.19C, Flight Procedures and Airspace. Both areas will be depicted on appropriate aeronautical charts.

Class E airspace areas designated as surface areas are published in Paragraph 6002 of FAA Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR71.1. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of the same Order. The Class E airspace designations listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a

Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority since it contains aircraft executing instrument approach procedures to Ankeny Regional Airport.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, dated august 30, 2004, and effective September 16, 2004, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ACE IA E2 Ankeny, IA

Ankeny Regional Airport, IA
(Lat. 41°41′28″ N., long. 93°33′59″ W.)
Ankeny NDB
(Lat. 41°41′55″ N., long. 93°33′50″ W.)

Within a 4.6-mile radius of Ankeny Regional Airport, and within 2.5 miles each side of the 0.46° bearing from the Ankeny NDB extending from the 4.6-mile radius of the airport to 7 miles northeast of the NDB, excluding that portion within the Des Moines Class C airspace area.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Ankeny, IA

Ankeny Regional Airport, IA
(Lat. 41°41′28″ N., long. 93°33′59″ W.)
Ankeny NDB
(Lat. 41°41′55″ N., long. 93°33′50″ W.)

That airspace extending upward from 7600 feet above the surface within a 7.1-mile radius of Ankeny Regional Airport, and within 2.5 miles each side of the 046° bearing from the Ankeny NDB extending from the 7.1-mile radius of the airport to 7 miles northeast of the NDB, excluding that portion within the Des Moines Class C and E airspace areas.

* * * * *

Issued in Kansas City, MO, on March 1, 2005.

Rosalyn R. Ward,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 05–4654 Filed 3–9–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–18948; Airspace Docket No. 04–AGL–18]

Modification of Class E Airspace; Mount Comfort, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Mount Comfort, IN. Standard Instrument Approach Procedures have been developed for Mount Comfort Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing these approaches. This action modifies the area of existing controlled airspace for Mount Comfort Airport.

DATES: Effective 0901 UTC, May 12, 2005.

FOR FURTHER INFORMATION CONTACT: J. Mark Reeves, FAA, Terminal Operations, Central Service Office, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7477.

SUPPLEMENTARY INFORMATION:

History

On Thursday, September 23, 2004, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Mount Comfort, IN (69 FR 56965). The proposal was to modify controlled airspace extending upward from 700 feet or more above the surface of the earth to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9M dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Mount Comfort, IN, to accommodate aircraft executing instrument flight procedures into and out of Mount Comfort Airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL IN E5 Mount comfort, IN [Revised]

Mount Comfort Airport, IN
(Lat. 39°50′37″ N., long. 85°53′49″ W.)
Indianapolis Metropolitan Airport, IN
(Lat. 39°56′07″ N., long. 86°02′42″ W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of the Mount Comfort Airport, and within a 6.3-mile radius of the Indianapolis Metropolitan Airport, excluding that airspace within the Indianapolis Executive Airport, IN, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois, on February 18, 2005.

Nancy B. Kort,

Area Director, Central Terminal Operations.

[FR Doc. 05–4656 Filed 3–9–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–18534; Airspace Docket No. 04–AGL–17]

Modification of Class E Airspace; Hibbing, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Hibbing, MN. Standard Instrument Approach Procedures have been developed for Chisholm-Hibbing Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing these approaches. This action modifies the area of existing controlled airspace for Chisholm-Hibbing Airport.

EFFECTIVE DATE: 0901 UTC, May 12, 2005.

FOR FURTHER INFORMATION CONTACT: J. Mark Reeves, FAA, Terminal Operations, Central Service Office, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7477.

SUPPLEMENTARY INFORMATION:

History

On Thursday, September 23, 2004, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Hibbing, MN (69 FR 56964). The proposal was to modify controlled airspace extending upward from 700 feet or more above the surface of the earth to contain Instrument Flight Rules operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9M dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies class E airspace at Hibbing, MN, to accommodate aircraft executing instrument flight procedures into and out of Chisholm-Hibbing Airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 Feet or more above the surface of the earth.

* * * * *

AGL MN E5 Hibbing, MN [Revised]

Hibbing, Chisholm-Hibbing Airport, MN
(Lat. 47°23′12″ N., long. 92°50′20″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Chisholm-Hibbing Airport.

* * * * *

Issued in Des Plaines, Illinois, on February 18, 2005.

Nancy B. Kort,

Area Director, Central Terminal Operations.

[FR Doc. 05–4657 Filed 3–9–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–20064; Airspace Docket No. 05–ACE–6]

Modification of Class E Airspace; Mountain Grove, MO.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Title 14 Code of Federal Regulations, part 71 (14

CFR part 71) by revising Class E airspace at Mountain Grove, MO. A review of the Class E airspace area extending upward from 700 feet above ground level (AGL) at Mountain Grove, MO revealed it is not in compliance with established airspace criteria. This airspace area is enlarged and modified to conform to FAA Orders. The intended effect of this rule is to provide controlled airspace of appropriate dimensions to protect aircraft departing from and executing Standard Instrument Approach Procedures (SIAPs) to Mountain Grove Memorial Airport. This rule also amends the Mountain Grove Memorial Airport reference point (ARP) in the legal description to reflect current data. The area is modified and enlarged to conform to the criteria in FAA Orders.

DATES: This direct final rule is effective on 0901 UTC, July 7, 2005.

Comments for inclusion in the Rules Docket must be received on or before April 18, 2005.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2005–20064/ Airspace Docket No. 05–ACE–6, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Mountain Grove, MO. An examination of controlled airspace for Mountain Grove, MO revealed the Class E airspace area does not comply with airspace requirements for diverse departures from Mountain Grove Memorial Airport as set forth in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The criteria in FAA Order 7400.2E for an aircraft to reach 1200 feet AGL, taking into consideration rising terrain, is based on a standard climb gradient of 200 feet per mile plus the distance from the airport reference point to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. This amendment expands the airspace area from a 6-mile to a 6.8-mile radius of Mountain Grove Memorial Airport and corrects the Mountain Grove Memorial Airport ARP in the legal description. These modifications provide controlled airspace of appropriate dimensions to protect aircraft departing from and executing SIAPs to Mountain Grove Memorial Airport and bring the legal description of the Mountain Grove, MO Class E airspace area into compliance with FAA Orders 7400.2E. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulations will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, an a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2005–20064/Airspace Docket No. 05–ACE–6.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority since it contains aircraft executing instrument approach procedures to Mountain Grove Memorial Airport.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Mountain Grove, MO

Mountain Grove Memorial Airport, MO
(Lat. 37°07′15″ N., long. 92°18′40″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Mountain Grove Memorial Airport.

* * * * *

Issued in Kansas City, MO, on February 22, 2005.

Anthony D. Roetzel,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 05–4658 Filed 3–9–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19582; Airspace Docket No. 04–ACE–72]

Establishment of Class E2 Airspace; and Modiciation of Class E5 Airspace; Newton, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes a Class E surface area at Newton, IA. It also modifies the Class E airspace area extending upward from 700 feet above the surface at Newton, IA.

The effect of this rule is to provide appropriate controlled Class E airspace for aircraft departing from and executing instrument approach procedures to Newton Municipal Airport and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

EFFECTIVE DATE: 0901 UTC, May 12, 2005.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, January 19, 2005, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a Class E surface area and to modify other Class E airspace at Newton, IA (70 FR 2989). The proposal was to bring Newton, IA airspace areas into compliance with FAA directives. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace designated as a surface area for an airport at Newton, IA. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing instrument approach procedures to Newton Municipal Airport. Weather observations will be provided by an Automatic Weather Observing/Reporting System (AWOS) and communications will be direct with Des Moines Terminal Radar Approach Control Facility.

This rule also revises the Class E airspace area extending upward from 700 feet above the surface at Newton, IA. An examination of this Class E airspace area for Newton, IA revealed noncompliance with FAA directives. This corrects identified discrepancies by decreasing the area from a 6.7-mile to a 6.5-mile radius of Newton Municipal Airport, decreasing the width of the extension from 2.6 to 1.4 miles each side of centerline, modifying the extension centerline and defining airspace of appropriate dimensions to protect aircraft departing and executing instrument approach procedures to Newton Municipal Airport. The airspace area is brought into compliance with FAA Orders 7400.2E, Procedures for Handling Airspace Matters, and 8260.19C, Flight Procedures and Airspace. Both areas will be depicted on appropriate aeronautical charts.

Class E airspace areas designated as surface areas are published in Paragraph 6002 of FAA Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of the same Order. The Class E airspace designations listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority since it contains aircraft executing instrument approach procedures to Newton Municipal Airport.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ACE IA E2 Newton, IA

Newton Municipal Airport, IA
(Lat. 41°40′28″ N., long. 93°01′18″ W.)
Newton VOR/DME
(Lat. 41°47′02″ N., long. 93°06′32″ W.)

Within a 4-mile radius of Newton Municipal Airport, and within 1.3 miles each side of the Newton VOR/DME 150° radial extending from the 4-mile radius of the airport to 1.4 miles southeast of the VOR/DME.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Newton, IA

Newton Municipal Airport, IA
(Lat. 41°40′28″ N., long. 93°01′18″ W.)
Newton VOR/DME
(Lat. 41°47′02″ N., long. 93°06′32″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Newton Municipal Airport, and within 1.4 miles each side of the Newton VOR/DME 150° radial extending from the 6.5-mile radius of the airport to the VOR/DME.

* * * * *

Issued in Kansas City, MO, on March 1, 2005.

Rosalyn R. Ward,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 05–4659 Filed 3–9–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740, 744, 772 and 774

[Docket No. 050218043–5043–01]

RIN 0694–AD42

Revisions to the Export Administration Regulations based on the 2004 Missile Technology Control Regime Plenary Agreements; Additions to the Entity List; Revisions to the Missile Catch-All Controls

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR), including various entries on the Commerce Control List (CCL), to reflect changes to the Missile Technology Control Regime (MTCR) Annex that were agreed to by MTCR member countries at the October 2004 Plenary in Seoul, South Korea, as well as the plenary decision to allow Bulgaria to become a member of the MTCR.

In addition to these changes, this rule adds four entities located in Syria to the Entity List. The Entity List is a compilation of end-users that present an unacceptable risk of using or diverting certain items to activities related to weapons of mass destruction. BIS requires a license for most exports or reexports to these entities and maintains the Entity List to inform the public of these license requirements.

Lastly, this rule revises the missile catch-all controls for Restrictions on Certain Rocket Systems, by clarifying that the general prohibition includes a license requirement for items that will be used, anywhere in the world *except* by governmental programs for nuclear weapons delivery of NPT Nuclear Weapons States that are also members of NATO, in ''the design, development, production or use of'' rocket systems or unmanned air vehicles, regardless of range capabilities, for the delivery of chemical, biological, or nuclear weapons. This is a clarification of revisions published November 8, 2004 (69 FR 64657).

EFFECTIVE DATE: This rule is effective: March 10, 2005.

FOR FURTHER INFORMATION CONTACT: Steven B. Clagett, Director, Nuclear and Missile Technology Controls Division, Bureau of Industry and Security, Telephone: (202) 482–1641.

SUPPLEMENTARY INFORMATION:

Background

The Missile Technology Control Regime (MTCR) is an export control arrangement among 34 nations, including the world's most advanced suppliers of ballistic missiles and missile-related materials and equipment. The regime establishes a common export control policy based on a list of controlled items (the Annex) and on guidelines (the Guidelines) that member countries follow to implement national export controls. The goal of maintaining the Annex and the Guidelines is to stem the flow of missile systems capable of delivering weapons of mass destruction to the global marketplace.

While the MTCR was originally created to prevent the spread of missiles capable of carrying a nuclear warhead, it was expanded in January 1993 to also cover delivery systems for chemical and biological weapons. The only absolute prohibition in the regime's Guidelines is on the transfer of complete ''production facilities'' for specially designed items in Category I of the MTCR Annex.

MTCR members voluntarily pledge to adopt the regime's export Guidelines and to restrict the export of items contained in the regime's Annex. The implementation of the regime's Guidelines is effectuated through the national export control laws and policies of the regime members.

This rule makes the following revisions to the Export Administration Regulations (EAR) to reflect changes to the Missile Technology Control Regime (MTCR) Annex agreed to at the October 2004 Plenary in Seoul, South Korea and to reflect the new membership of Bulgaria in the MTCR:

As a result of Bulgaria becoming a member of the Missile Technology Control Regime, the entry for Bulgaria in supplement No. 1 to part 740 (Country Group A) is revised by inserting an ''X'' in the box under column [A:2](Missile Technology Control Regime).

This rule amends Part 772 of the EAR to revise the definition for ''Usable in'' or ''Capable of'' (MTCR context) to now include ''usable for'' and ''usable as'' in the list of terms that are defined by this definition. In addition, the first sentence of this definition is revised from reading ''Equipment, parts, components or 'software' that are suitable for a particular purpose.'' to read ''Equipment, parts, components, materials or 'software' *which* are suitable for a particular purpose.'' (MTCR Annex change, Introduction, Definitions, Terminology)

In addition, the Commerce Control List (CCL) (EAR Part 774) is amended to

reflect changes to the Missile Technology Control Regime (MTCR) Annex agreed to at the October 2004 Plenary in Seoul, South Korea. Changes to three ECCNs are expected to result in some increase in licensing activity, however the majority of these amendments reflect clarifications to the CCL that will result in no actual change to the control parameters of the affected ECCNs.

The following ECCNs are affected:

ECCN 1C007 is amended by changing the MT license requirement in the License Requirements section by increasing the frequency parameters from ''100 Hz to 10,000 MHz for use in missile radomes'' to read ''100 MHz to 100 GHz for use in 'missile' radomes.'' (MTCR Annex change, Category II: Item 6(C)(5)) This amendment is a clarification to the CCL that will result in an increase in the frequency parameters for the control parameters of this ECCN but will have only a minimal increase on licensing activity;

ECCN 1C107 is amended to correspond with a change made to the related MT license requirement in ECCN 1C007 by increasing the frequency parameters from ''at frequencies from 100 Hz to 10 GHz'' to read ''at any frequency from 100 MHz to 100 GHz'' (MTCR Annex change, Category II: Item 6(C)(5)) This amendment is a clarification to the CCL that will result in an increase in the frequency parameters for the control parameters of this ECCN but will have only a minimal increase on licensing activity.

ECCN 1C111 is amended by adding a sentence at the end of the ''related controls'' paragraph that reads ''Solid oxidizer substances are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls (*See* 22 CFR 121.1 Category V).'' (clarification needed as a result of changes made at MTCR Plenary) This amendment is a clarification to the CCL that will result in no actual change in the control parameters of this ECCN.

ECCN 1C116 is amended by clarifying the heading by replacing the phrase ''of 1,500 MPa or greater'' with the phrase ''equal to or greater than 1.5 GPa'' (MTCR Annex change, Category II: Item 6(C)(8)) This amendment is a clarification to the control parameters of this ECCN, but will have a minimal increase on licensing activity.

ECCN 2A001 is amended by adding a new MT control to the CCL to control exports and reexports of ''Radial ball bearings having all tolerances specified in accordance with ISO 492 Tolerance Class 2 (or ANSI/ABMA Std 20 Tolerance Class ABEC–9, or other national equivalents), or better and having all the following characteristics,'' as described in the MT control of the License Requirements section of this ECCN. (MTCR Annex change, Category II: Item 3(A)(7)) As a result of this amendment, a new license requirement will be added to the CCL for Missile Technology controls that will result in an increase in license applications for ball bearings meeting the criteria of this ECCN.

ECCN 2B104 is amended by clarifying the language used in the 2B104.a parameter by inserting the phrase ''equal to or greater than'' before ''69 MPa'' (MTCR Annex change, Category II: Item 6(B)(3)(a)) This amendment is a clarification to the CCL that will result in no actual change in the control parameters of this ECCN.

ECCN 2B116 is amended:

(a) By changing the 2B116.a parameter from ''at 10 g rms or more over the entire range 20 Hz to 2,000 Hz and imparting forces of 50 kN (11,250 lbs.)'' to read ''at an acceleration equal to or greater than 10 g rms between 20 Hz to 2,000 Hz and imparting forces equal to a greater than 50 kN (11,250 lbs.)'' (MTCR Annex change, Category II: Item 15(B)(1)(a)) This amendment is a clarification to the CCL that will result in no actual change in the control parameters of this ECCN;

(b) By clarifying the language used in the 2B116.c parameter by replacing the phrase ''of 50 kN (11,250 lbs.), measured 'bare table', or greater'' with the phrase ''equal to or greater than 50 kN (11,250 lbs.), measured 'bare table' ''. (MTCR Annex change, Category II: Item 15(B)(1)(c)) This amendment is a clarification to the CCL that will result in no actual change in the control parameters of this ECCN; and

(c) By clarifying the language used in 2B116.d parameter by replacing the phrase ''of 50 kN, measured ''bare table'', or greater'' with the phrase ''equal to or greater than 50 kN, measured ''bare table'' (MTCR Annex change, Category II: Item 15(B)(1)(d)) This amendment is a clarification to the CCL that will result in no actual change in the control parameters of this ECCN.

ECCN 9A106 is amended:

(a) By clarifying the language used in the 9A106.d parameter by replacing the phrase ''of more than'' with the phrase ''greater than'' before ''10 g rms'' (MTCR Annex change, Category II: Item 3(A)(5)) This amendment is a clarification to the CCL that will result in no actual change in the control parameters of this ECCN;

(b) By amending note (a) in the ''items'' paragraph to add the phrase ''equal to or greater than'' to clarify which servo valves are controlled by 9A106.d (MTCR Annex change, Category II: Item 3(A)(5) Notes (1)) This amendment is a clarification to the CCL that will result in no actual change in the control parameters of this ECCN; and

(c) By clarifying the language used in the 9A106.e parameter by replacing the phrase ''of more than'' with the phrase ''greater than'' before ''10g rms'' (MTCR Annex change, Category II: Item 10(A)(3)) This amendment is a clarification to the CCL that will result in no actual change in the control parameters of this ECCN.

ECCN 9A107 is amended by clarifying the heading by replacing the phrase ''of 0.841 Mns or greater.'' with the phrase ''equal to or greater than 8.41×10^5 Ns, but less than 1.1×10^6 Ns.'' (MTCR Annex change, Category II: Item 20(A)(1)(b)) This amendment is a clarification to the CCL that will result in no actual change in the control parameters of this ECCN.

ECCN 9B106 is amended:

(a) By changing the 9B106.a.1 parameter from ''Vibration environments of 10 g rms or greater between 20 Hz and 2,000 Hz imparting forces of 5 kN or greater'' to read ''Vibration environments equal to or greater than 10 g rms, measured 'bare table', between 20 Hz and 2,000 Hz imparting forces equal to or greater than 5 kN'' (MTCR Annex change, Category II: Item 15(B)(4)(a)(1)) This amendment is a clarification to the CCL that will result in no actual change in the control parameters of this ECCN;

(b) By clarifying the language used in the 9B106.a.2.a parameter by replacing the phrase ''Altitude of 15,000 m or greater'' with the phrase ''Altitude equal to or greater than 15,000 m'' (MTCR Annex change, Category II: Item 15(B)(4)(a)(2)(a)) This amendment is a clarification to the CCL that will result in no actual change in the control parameters of this ECCN;

(c) By adding a technical note to specify that paragraph 9B106.a describes systems that are capable of generating a vibration environment with a single wave (*e.g.*, a sine wave) and systems capable of generating a broad band random vibration (*i.e.*, power spectrum)'' (MTCR Annex change, Category II: Item 15(B)(4) Technical note) This amendment is a clarification to the CCL that will result in no actual change in the control parameters of this ECCN;

(d) By changing the type of chambers covered in the 9B106.b parameter from ''Anechoic chambers'' to ''Environmental chambers capable of simulating all of the following flight conditions' (MTCR Annex change,

Category II: Item 15(B)(4)(b)) This amendment is a clarification to the CCL that will result in a change in the control parameters of this ECCN but will have only a minimal impact on licensing activity;

(e) By changing the 9B106.b.1 parameter from ''a rated power output of 4 kW or greater'' to read ''a total rated acoustic power output of 4kW or greater'' (MTCR Annex change, Category II: Item 15(B)(4)(b)(1)) This amendment is a clarification to the CCL that will result in no actual change in the control parameters of this ECCN; and

(f) By clarifying the language used in the 9B106.b.2.a parameter by replacing the phrase ''Altitude of 15,000 m or greater'' with the phrase ''Altitude equal to or greater than 15,000 m''. (MTCR Annex change, Category II: Item 15(B)(4)(b)(2)(a)) This amendment is a clarification to the CCL that will result in no actual change in the control parameters of this ECCN.

ECCN 9B117 is amended:

(a) By clarifying the heading by replacing the phrase ''rockets or rocket motors'' with the phrase ''rockets, motors or rocket engines''. (clarification to be consistent with the MTCR change made to 9B117.a) This amendment is a clarification to the heading of this ECCN and will have only a minimal impact on licensing activity; and

(b) By changing the 9B117.a parameter from ''capacity to handle more than 90 kN of thrust'' to read ''capacity to handle solid or liquid propellant rocket motors or rocket engines having a thrust greater than 90 kN''. (MTCR Annex change, Category II: Item 15(B)(3)) This amendment is a clarification to the control parameters of this ECCN and will have a minimal impact on licensing activity.

This rule also makes the following revisions to the EAR:

Pursuant to Section 744.3(b), this rule amends Supplement No. 4 to part 744 (the Entity List) by adding four entities located in Syria to the Entity List. This notifies the public that a license is required for the export or reexport of all items subject to the EAR to the Higher Institute of Applied Science and Technology (HIAST), Industrial Establishment of Defense (IED), National Standards and Calibration Laboratory (NSCL), and the Scientific Studies and Research Center (SSRC). License applications to export or reexport items subject to the EAR to these entities will be reviewed with a presumption of denial.

This rule revises the license requirement imposed in 744.3(a)(2) (Restrictions on Certain Rocket Systems), by clarifying that the general prohibition now includes a license requirement for items that will be used, anywhere in the world, *except* by governmental programs for nuclear weapons delivery of NPT Nuclear Weapons States that are also members of NATO, in ''the design, development, production or use of'' rocket systems or unmanned air vehicles, regardless of range capabilities, for the delivery of chemical, biological, or nuclear weapons.

Savings Clause

Shipments of items removed from eligibility for a License Exception or export or reexport without a license (NLR) as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting or reexporting carrier, or en route aboard a carrier to a port of export or reexport, on March 10, 2005, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export or reexport without a license (NLR) so long as they are exported or reexported before April 11, 2005. Any such items not actually exported or reexported before midnight, on April 11, 2005, require a license in accordance with this rule.

Although the Export Administration Act expired on August 20, 2001, Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp., p. 783 (2002)), as extended by the Notice of August 6, 2004, 69 FR 48763 (August 10, 2004) continues the Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management and Budget Control Number. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 58 minutes for a manual or electronic submission. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to David Rostker, Office of Management and Budget (OMB), by e-mail to *David_Rostker@omb.eop.gov*, or by fax to (202) 395–7285; and to the Office of Administration, Bureau of Industry and Security, Department of Commerce, 14th and Pennsylvania Avenue, NW., Room 6883, Washington, DC 20230.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Timothy Mooney, Office of Exporter Services, Bureau of Industry and Security, Department of Commerce, PO Box 273, Washington, DC 20044.

List of Subjects

15 CFR Part 740

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

15 CFR Part 772

Exports.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

■ Accordingly, parts 740, 744, 772 and 774 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

PART 740—[AMENDED]

■ 1. The authority citation for 15 CFR part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec. 901–911, Pub. L. 106–387; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004).

SUPPLEMENT NO. 1 TO PART 740—[AMENDED]

■ 2. Supplement No. 1 to part 740—Country Group A is amended in the entry for ''Bulgaria'' by adding an ''X'' in the [A:2] (Missile Technology Control Regime) column.

PART 744—[AMENDED]

■ 3. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004); Notice of November 4, 2004, 69 FR 64637 (November 8, 2004).

§ 744.3 [Amended]

■ 4. Section 744.3 is amended by revising the phrase ''anywhere in the world, in rocket systems or unmanned air vehicles'' in paragraph (a)(2) to read ''anywhere in the world except by governmental programs for nuclear weapons delivery of NPT Nuclear Weapons States that are also members of NATO, in the design, development, production or use of rocket systems or unmanned air vehicles''.

■ 5. Supplement No. 4 to part 744 is amended by adding, in alphabetical order, the following country and entities:

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST

Country	Entity	License requirement	License review policy	Federal Register citation
	* * *	*	* *	
Syria	Higher Institute of Applied Science and Technology (HIAST).	For all items subject to the EAR. (see § 744.3 of the EAR).	Presumption of denial	70 FR [INSERT FR PAGE NUMBER, 3/10/05.]
	Industrial Establishment of Defense (IED).	For all items subject to the EAR. (see § 744.3 of the EAR).	Presumption of denial	70 FR [INSERT PAGE NUMBER, 3/10/05.]
	National Standards and Calibration Laboratory (NSCL).	For all items subject to the EAR. (see § 744.3 of the EAR).	Presumption of denial	70 FR [INSERT FR PAGE NUMBER, 3/10/05.]
	Scientific Studies and Research Center (SSRC).	For all items subject to the EAR. (see § 744.3 of the EAR).	Presumption of denial	70 FR [INSERT FR PAGE NUMBER, 3/10/05.]

* * * * *

PART 772—[AMENDED]

■ 6. The authority citation for 15 CFR part 772 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004).

■ 7. In section 772.1 of the EAR, revise the definition of ''Usable in or Capable of''. (MTCR context), as set forth below:

§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

* * * * *

''Usable in'', ''usable for'', ''usable as'' or ''Capable of''. (MTCR context)—Equipment, parts, components, materials or ''software'' which are suitable for a particular purpose. There is no need for the equipment, parts, components, materials or ''software'' to have been configured, modified or specified for the particular purpose. For example, any military specification memory circuit would be ''capable of'' operation in a guidance system.

* * * * *

PART 774—[AMENDED]

8. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.;* 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.,* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004).

■ 9. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, ''Microorganisms'' & ''Toxins'', Export Control Classification Number (ECCN) 1C007 is amended by revising the License Requirements section, to read as follows:

SUPPLEMENT NO. 1 TO PART 744—THE COMMERCE CONTROL LIST

* * * * *

1C007 Ceramic Base Materials, Non-''Composite'' Ceramic Materials, Ceramic-''Matrix'' ''Composite'' Materials and Precursor Materials, as Follows (see List of Items Controlled)

License Requirements

REASON FOR CONTROL: NS, MT, AT

Control(s)	Country Chart
NS applies to entire entry	NS Column 2.
MT applies to items in 1C007.d and .f when the dielectric constant is less than 6 at any frequency from 100 MHz to 100 GHz for use in ''missile'' radomes.	MT Column 1.

REASON FOR CONTROL: NS, MT, AT—Continued

Control(s)	Country Chart
AT applies to entire entry	AT Column 1.

License Requirement Notes: See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

* * * * *

■ 10. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, ''Microorganisms'' & ''Toxins'', Export Control Classification Number (ECCN) 1C107 is amended by revising the ''items'' paragraph in the List of Items Controlled section, to read as follows:

1C107 Graphite and Ceramic Materials, Other Than Those Controlled by 1C007, as Follows (see List of Items Controlled)

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items:

a. Fine grain recrystallized bulk graphites with a bulk density of 1.72 g/cm^3 or greater, measured at 288 K (15 °C), and having a particle size of 100 micrometers or less, usable for rocket nozzles and reentry vehicle nose tips as follows:

a.1. Cylinders having a diameter of 120 mm or greater and a length of 50 mm or greater;

a.2. Tubes having an inner diameter of 65 mm or greater and a wall thickness of 25 mm or greater and a length of 50 mm or greater;

a.3. Blocks having a size of 120 mm x 120 mm x 50 mm or greater.

b. Pyrolytic or fibrous reinforced graphites, usable for rocket nozzles and reentry vehicle nose tips;

c. Ceramic composite materials (dielectric constant is less than 6 at any frequency from 100 MHz to 100 GHz), for use in ''missile'' radomes; and

d. Bulk machinable silicon-carbide reinforced unfired ceramic, usable for nose tips.

■ 11. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, ''Microorganisms'' & ''Toxins'', Export Control Classification Number (ECCN) 1C111 is amended by revising the ''related controls'' paragraph in the List of Items Controlled section, to read as follows:

1C111 Propellants and Constituent Chemicals for Propellants, Other Than Those Specified in 1C011, as Follows (See List of Items Controlled)

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: (1) Butacene as defined by 1C111.c.1 is subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. (See 22 CFR 121.12(b)(6), other ferrocene derivatives). (2) See 1C018 for controls on oxidizers that are composed of fluorine and one or more of the following—other halogens, oxygen, or nitrogen. Solid oxidizer substances are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls (See 22 CFR 121.1 Category V).

Related Definitions: * * *

Items: * * *

■ 12. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, ''Microorganisms'' & ''Toxins'', Export Control Classification Number (ECCN) 1C116 is amended by revising the Heading, to read as follows:

1C116 Maraging Steels (Steels Generally Characterized by High Nickel, Very Low Carbon Content and the Use of Substitutional Elements or Precipitates To Produce Age-Hardening) Having an Ultimate Tensile Strength Equal to or Greater Than 1.5 GPa, Measured at 293 K (20 °C), in the Form of Sheet, Plate or Tubing With a Wall or Plate Thickness Equal to or Less Than 5 mm

* * * * *

■ 13. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2A001 is amended by revising the License Requirements section, and the License Exceptions section, to read as follows:

2A001 Anti-Friction Bearings and Bearing Systems, as Follows, (See List of Items Controlled) and Components Therefor

License Requirements

REASON FOR CONTROL: NS, MT, AT

Control(s)	Country Chart
NS applies to entire entry	NS Column 2.
MT applies to radial ball bearings having all tolerances specified in accordance with ISO 492 Tolerance Class 2 (or ANSI/ABMA Std 20 Tolerance Class ABEC–9, or other national equivalents) or better and having all the following characteristics: An inner ring bore diameter between 12 and 50 mm; an outer ring outside diameter between 25 and 100 mm; and a width between 10 and 20 mm..	MT Column 1.
AT applies to entire entry	AT Column 1.

License Exceptions

LVS: $3000, N/A for MT
GBS: Yes, for 2A001.a and 2A001.b, N/A for MT
CIV: Yes, for 2A001.a and 2A001.b, N/A for MT

* * * * *

■ 14. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2B104 is amended by revising the ''items'' paragraph in the List of Items Controlled section, to read as follows:

2B104 ''Isostatic Presses'', Other Than Those Controlled by 2B004, Having All of the Following Characteristics (See List of Items Controlled)

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items:

a. Maximum working pressure equal to or greater than 69 MPa;

b. Designed to achieve and maintain a controlled thermal environment of 873 K (600° C) or greater; and

c. Possessing a chamber cavity with an inside diameter of 254 mm or greater.

■ 15. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2B116 is amended by revising the ''items'' paragraph in the List of Items Controlled section, to read as follows:

2B116 Vibration Test Systems, Equipment and Components Therefor, as Follows (See List of Items Controlled)

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items:

a. Vibration test systems employing feedback or closed loop techniques and incorporating a digital controller, capable of vibrating a system at an acceleration equal to or greater than 10 g rms between 20 Hz to 2,000 Hz and imparting forces equal to or greater than 50 kN (11,250 lbs.), measured ''bare table'';

b. Digital controllers, combined with specially designed vibration test ''software'', with a real-time bandwidth greater than 5 kHz and designed for use with vibration test systems described in 2B116.a;

c. Vibration thrusters (shaker units), with or without associated amplifiers, capable of imparting a force equal to or greater than 50 kN (11,250 lbs.), measured 'bare table', and usable in vibration test systems described in 2B116.a;

d. Test piece support structures and electronic units designed to combine multiple shaker units into a complete shaker system capable of providing an effective combined force equal to or greater than 50 kN, measured 'bare table', and usable in vibration test systems described in 2B116.a.

Technical Note: 'bare table' means a flat table, or surface, with no fixture or fitting.

■ 16. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Propulsion Systems, Space Vehicles, and Related Equipment, Export Control Classification Number (ECCN) 9A106 is amended by revising the ''items'' paragraph in the List of Items Controlled section, to read as follows:

9A106 Systems or Components, Other Than Those Controlled by 9A006, Usable in ''Missiles'', as Follows (see List of Items Controlled), and Specially Designed for Liquid Rocket Propulsion Systems

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items:

a. Ablative liners for thrust or combustion chambers;

b. Rocket nozzles;

c. Thrust vector control sub-systems;

Technical Note: Examples of methods of achieving thrust vector control controlled by 9A106.c includes:

1. Flexible nozzle;
2. Fluid or secondary gas injection;
3. Movable engine or nozzle;
4. Deflection of exhaust gas steam (jet vanes or probes); or
5. Thrust tabs.

d. Liquid and slurry propellant (including oxidizers) control systems, and specially designed components therefor, designed or modified to operate in vibration environments greater than 10 g rms between 20 Hz and 2000 Hz.

Note: The only servo valves and pumps controlled by 9A106.d, are the following:

a. Servo valves designed for flow rates equal to or greater than 24 liters per minute, at an absolute pressure equal to or greater than 7 MPa, that have an actuator response time of less than 100 ms;

b. Pumps, for liquid propellants, with shaft speeds equal to or greater than 8,000 rpm or with discharge pressures equal to or greater than 7 MPa.

e. Flight control servo valves designed or modified for use in ''missiles'' and designed or modified to operate in a vibration environment greater than 10g rms over the entire range between 20Hz and 2 kHz.

■ 17. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Propulsion Systems, Space Vehicles and Related Equipment, Export Control Classification Number (ECCN) 9A107 is amended by revising the Heading, to read as follows:

9A107 Solid Propellant Rocket Engines, Usable in Rockets With a Range Capability of 300 Km or Greater, Other Than Those Controlled by 9A007, Having Total Impulse Capacity Equal to or Greater Than 8.41×10^5 Ns, but less than 1.1×10^6 (These Items are Subject to the Export Licensing Authority of the U.S. Department of State, Directorate of Defense Trade Controls. See 22 CFR part 121.)

* * * * *

■ 18. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Propulsion Systems, Space Vehicles and Related Equipment, Export Control Classification Number (ECCN) 9B106 is amended by revising the ''items'' paragraph of the List of Items Controlled section, to read as follows:

9B106 Environmental Chambers and Anechoic Chambers, as Follows (see List of Items Controlled)

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items:

a. Environmental chambers capable of simulating all of the following flight conditions:

a.1. Vibration environments equal to or greater than 10 g rms, measured ''bare table'', between 20 Hz and 2,000 Hz imparting forces equal to or greater than 5 kN; and

a.2. Any of the following:

a.2.a. Altitude equal to or greater than 15,000 m; or

a.2.b. Temperature range of at least 223 K (−50° C) to 398 K (+125° C);

Technical Note: Item 9B106.a describes systems that are capable of generating a vibration environment with a single wave (*e.g.*, a sine wave) and systems capable of generating a broad band random vibration (*i.e.*, power spectrum).

b. Environmental chambers capable of simulating all of the following flight conditions:

b.1. Acoustic environments at an overall sound pressure level of 140 dB or greater (referenced to 2×10^{-5} N/m^2) or with a total rated acoustic power output of 4kW or greater; and

b.2. Any of the following:

b.2.a. Altitude equal to or greater than 15,000 m; or

b.2.b. Temperature range of at least 223K (−50° C) to 398 K (+125° C).

■ 19. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Propulsion Systems, Space Vehicles and Related Equipment, Export Control Classification Number (ECCN) 9B117 is amended by revising the Heading, and the ''items'' paragraph in the List of Items Controlled section, to read as follows:

9B117 Test Benches and Test Stands for Solid or Liquid Propellant Rockets, Motors or Rocket Engines, Having Either of the Following Characteristics (see List of Items Controlled)

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items:

a. The capacity to handle solid or liquid propellant rocket motors or rocket engines having a thrust greater than 90 kN; or

b. Capable of simultaneously measuring the three axial thrust components.

Dated: March 3, 2005.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 05–4626 Filed 3–9–05; 8:45 am]

BILLING CODE 3510–33–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

RIN 0960–AF90

Wage Credits for Veterans and Members of the Uniformed Services

AGENCY: Social Security Administration (SSA).

ACTION: Final rules.

SUMMARY: We are amending our rules on wage credits for veterans and members of the uniformed services. The revisions are required by the Department of Defense Appropriations Act of 2002 and the Social Security Protection Act of 2004. The enactments changed a Social Security Act requirement providing deemed military wage credits for service as members of the uniformed services

on active duty or active duty for training beginning in 1957 (when that service was first covered for Social Security purposes on a contributory basis). The provisions provide for the termination of such deemed military wage credits effective with military wages earned after December 31, 2001. The wage credits will continue to be given for periods prior to calendar year 2002.

DATES: These regulations are effective March 10, 2005.

Electronic Version: The electronic file of this document is available on the date of publication in the **Federal Register** on the Internet site for the Government Printing Office, *http://www.gpoaccess.gov/fr/index.html*. It is also available on the Internet site for SSA (*i.e.*, Social Security Online) at *http://policy.ssa.gov/pnpublic.nsf/LawsRegs*.

FOR FURTHER INFORMATION CONTACT: Marylin Buster, Social Insurance Specialist, Office of Income Security Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–2490 or TTY (410) 966–5609. For information on eligibility, claiming benefits, or coverage of earnings, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778.

SUPPLEMENTARY INFORMATION:

Background

Beginning in 1957, earnings of members of the uniformed services became covered for Social Security purposes. In 1968, Congress added a new section in the Social Security Act (section 229) providing for deemed military wage credits for active duty service and requiring Social Security to deem wage credits to the earnings record of uniformed service members when determining benefit entitlement and payment. Subsequently, the provision for the wage deeming program was made retroactive to 1957. The deemed military wage credits were granted in recognition that active service members did not get Social Security credit for the value of pay in kind such as food, shelter, and medical care, which is generally counted for other jobs covered under Social Security. However, due to the lower pay of service members, it was decided that it would be unfair to have the service members pay additional Federal Insurance Contributions Act (FICA) tax. The Trust Funds were to be reimbursed from general revenues on a current basis for the added cost of benefits, much the way the trust funds were reimbursed for gratuitous wage credits.

The amount of deemed military wage credits changed over the years. The last change in 1977, provided for the crediting of deemed military wages of $100 for every $300 of covered military wages up to a maximum of $1,200 in deemed military wage credits per year. This modification was due to the change to annual wage reporting from quarterly wage reporting.

In 1983, the method of financing deemed military wage credits changed by authorizing the General Fund of the Treasury to reimburse to the Trust Funds the amount of FICA tax (both employer and employee shares) that would have been paid on the deemed military wages had they been actual earnings. Before enactment of the 1983 amendments, the Social Security trust funds were reimbursed annually by Treasury (*i.e.*, general revenues), based on an amortization schedule, for the cost of additional Social Security benefits attributable to the deemed military wage credits for military service for the period after 1956. The 1983 amendments changed the financing structure so that the Trust funds are reimbursed for an amount equal to the Social Security taxes that would have been imposed annually if the deemed wage credits had been remuneration for employment.

Section 8134 of The Department of Defense Appropriations Act of 2002 (Pub. L. 107–117) modified the requirement of providing deemed military wage credits for service as members of the uniformed services on active duty or active duty for training beginning in 1957 (when that service was first covered for Social Security purposes on a contributory basis). With this modification, military wage credits will no longer be provided for military wages earned after December 31, 2001.

In 2004, a technical amendment in section 420 of Pub. L. 108–203, the Social Security Protection Act of 2004 amended section 229 of the Act to reflect section 8134 of Pub. L. 107–117 which ended the wage deeming program after 2001. The wage credits will continue to be given for periods prior to calendar year 2002. These qualifying periods of military service include active service during the World War II period September 16, 1940 through July 24, 1947, the post-World War II period July 25, 1947, through December 31, 1956, and members of the uniformed service on active duty after 1956 and before 2002.

Explanation of Changes

We are revising §§ 404.1301, 404.1302, and 404.1341 to reflect the termination of automatic across-the-board wage credits effective with military wages earned after December 31, 2001. The wage credits will continue to be applied for periods prior to calendar year 2002.

Regulatory Procedures

Pursuant to section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5), as amended by section 102 of Public Law 103–296, SSA follows the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest.

In the case of these final rules, we have determined that, under 5 U.S.C. 553(b)(B), good cause exists for dispensing with the notice and public comment procedures. Good cause exists because these regulations merely conform our rules on deeming military wage credits to current law. The Agency has operated in accordance with the revised laws since January 2002. These regulations contain no substantive changes of interpretation. Therefore, opportunity for prior comment is unnecessary, and we are issuing these regulations as final rules.

In addition, we find good cause for dispensing with the 30-day delay in the effective date of a substantive rule, provided for by 5 U.S.C. 553(d). As explained above, these revisions conform our rules to current law and reflect our current practice. However, without these changes, our rules on military wage credits will conflict with current law and may mislead the public. Therefore, we find that it is in the public interest to make these rules effective upon publication.

Executive Order 12866, as Amended by Executive Order 13258

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules do not meet the criteria for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they were not subject to OMB review. We have also determined that these rules meet the plain language requirement of Executive Order 12866, as amended by Executive Order 13258.

Regulatory Flexibility Act

We certify that these final regulations will not have a significant economic impact on a substantial number of small entities under the criteria of the

Regulatory Flexibility Act, as amended, 5 U.S.C. 601, *et seq.* Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These final regulations will impose no additional information collection requirements requiring OMB clearance under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance.)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-age, survivors and disability insurance, Reporting and recordkeeping requirements, Social Security.

Dated: December 2, 2004.

Jo Anne B. Barnhart,

Commissioner of Social Security.

■ For the reasons stated in the preamble, we are amending subpart N of part 404 of Title 20 of the Code of Federal Regulations as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950—)

Subpart N—[Amended]

■ 1. The authority citation for subpart N of part 404 continues to read as follows:

Authority: Secs. 205(a) and (p), 210(l) and (m), 215(h), 217, 229, and 702(a)(5) of the Social Security Act (42 U.S.C. 405(a) and (p), 410(l) and (m), 415(h), 417, 429, and 902(a)(5)).

§ 404.1301 [Amended]

■ 2. In § 404.1301, at the end of the fifth sentence in paragraph (a), add ''through 2001.''

§ 404.1302 [Amended]

■ 3. In § 404.1302, in the definition of ''Wage credit,'' the second sentence is revised by removing the words ''after 1956'' and adding in their place ''from 1957 through 2001.''

§ 404.1341 [Amended]

■ 4. In § 404.1341, in the first sentence of paragraph (a), remove the words ''after 1956'' and add in their place ''from 1957 through 2001'' and in paragraph (b)(1), remove the words ''after 1977'' and add in their place ''from 1978 through 2001.''

[FR Doc. 05–4638 Filed 3–9–05; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 862

[Docket No. 2005N–0067]

Medical Devices; Clinical Chemistry and Clinical Toxicology Devices; Drug Metabolizing Enzyme Genotyping System

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying drug metabolizing enzyme (DME) genotyping test systems into class II (special controls). The special control that will apply to the device is the guidance document entitled ''Class II Special Controls Guidance Document: Drug Metabolizing Enzyme Genotyping System.'' The agency is classifying the device into class II (special controls) in order to provide a reasonable assurance of safety and effectiveness of the device. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice of availability of a guidance document that is the special control for this device.

DATES: This rule is effective April 11, 2005. The classification was effective December 23, 2004.

FOR FURTHER INFORMATION CONTACT: Courtney Harper, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 240–276–0443, ext. 159.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 513(f)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976, the date of enactment of the Medical Device Amendments of 1976 (the amendments), generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless and until the device is classified or reclassified into class I or II or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously marketed devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807) of FDA's regulations.

Section 513(f)(2) of the act provides that any person who submits a premarket notification under section 510(k) of the act for a device that has not previously been classified may, within 30 days after receiving an order classifying the device in class III under section 513(f)(1), request FDA to classify the device under the criteria set forth in section 513(a)(1). FDA shall, within 60 days of receiving such a request, classify the device by written order. This classification shall be the initial classification of the device. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the **Federal Register** announcing such classification (section 513(f)(2) of the act).

In accordance with section 513(f)(1) of the act, FDA issued a notice on December 17, 2004, classifying the Roche Amplichip CYP450 Test (2D6) in class III, because it was not substantially equivalent to a device that was introduced or delivered for introduction into interstate commerce for commercial distribution before May 28, 1976, or to a device that was subsequently reclassified into class I or class II. On December 20, 2004, Roche Molecular Systems, Inc., submitted a petition requesting classification of the Roche Amplichip CYP450 Test (2D6) under section 513(f)(2) of the act. The manufacturer recommended that the device be classified into class II.

In accordance with section 513(f)(2) of the act, FDA reviewed the petition in order to classify the device under the criteria for classification set forth in section 513(a)(1). Devices are to be classified into class II if general controls, by themselves, are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use. After review of the information submitted in the petition, FDA determined that the Roche Amplichip CYP450 Test (2D6) can be classified in class II with the establishment of special controls. FDA believes these special controls, in addition to general controls, will provide reasonable assurance of safety and effectiveness of the device.

The device is assigned the generic name ''drug metabolizing enzyme genotyping system.'' It is identified as a device intended for use in testing deoxyribonucleic acid (DNA) extracted from clinical samples to identify the

presence or absence of human genotypic markers encoding a DME. This device is used as an aid in determining treatment choice and individualizing treatment dose for therapeutics that are metabolized primarily by the specific enzyme about which the system provides genotypic information.

FDA has identified the risks to health associated with this type of device as failure to correctly identify the DME genotype, which could result in incorrect patient management decisions. In these situations a patient might be prescribed an incorrect drug or drug dose with concomitant increased risk of adverse reactions due to increased or decreased drug metabolism. Likewise, failure to properly interpret genotyping results could lead to incorrect prediction of phenotype and result in incorrect patient management decisions. The information provided by this type of genetic test should only be used to supplement other tools for therapeutic decisionmaking in conjunction with routine monitoring by a physician.

The effect that a specific DME allele has on drug metabolism may vary depending on the specific drug, even for drugs within a specific class. Effects of specific alleles on drug metabolism are well-documented for some drugs; for other drugs, they are less well-documented. Therefore, clinicians should use professional judgment when interpreting results from this type of test. In addition, results from this type of assay should not be used to predict a patient's response to drugs in cases where either (1) the DME activity of the allele has not been determined or (2) the drug's metabolic pathway has not been clearly established.

The class II special controls guidance document also provides information on how to meet premarket (510(k)) submission requirements for the device, including recommendations on validation of performance characteristics and labeling. FDA believes that following the class II special controls guidance document generally addresses the risks to health identified above. Therefore, on December 23, 2004, FDA issued an order to the petitioner classifying the device into class II. FDA is codifying this classification by adding 21 CFR 862.3360.

Following the effective date of this final classification rule, any firm submitting a 510(k) premarket notification for a DME genotyping system will need to address the issues covered in the special controls guidance. However, the firm need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurance of safety and effectiveness.

Section 510(m) of the act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k), if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. For this type of device, however, FDA has determined that premarket notification is necessary to provide reasonable assurance of safety and effectiveness. FDA review of performance characteristics, test methodology, and labeling to satisfy requirements of § 807.87(e), will provide reasonable assurance that acceptable levels of performance for both safety and effectiveness will be addressed before marketing clearance. Thus, persons who intend to market this type of device must submit to FDA a premarket notification containing information on the DME genotyping system before marketing the device.

II. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is not a significant regulatory action under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because classification of this device into class II will relieve manufacturers of the device of the cost of complying with the premarket approval requirements of section 515 of the act (21 U.S.C. 360e), and may permit small potential competitors to enter the marketplace by lowering their costs, the agency certifies that the final rule will not have a significant impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $115 million, using the most current (2003) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

IV. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

V. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VI. Reference

The following reference has been placed on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Petition from Roche Molecular Systems, Inc., dated December 20, 2004.

List of Subjects in 21 CFR Part 862

Medical devices.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 862 is amended as follows:

PART 862—CLINICAL CHEMISTRY AND CLINICAL TOXICOLOGY DEVICES

■ 1. The authority citation for 21 CFR part 862 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Section 862.3360 is added to subpart D to read as follows:

§ 862.3360 Drug metabolizing enzyme genotyping system.

(a) *Identification.* A drug metabolizing enzyme genotyping system is a device intended for use in testing deoxyribonucleic acid (DNA) extracted from clinical samples to identify the presence or absence of human genotypic markers encoding a drug metabolizing enzyme. This device is used as an aid in determining treatment choice and individualizing treatment dose for therapeutics that are metabolized primarily by the specific enzyme about which the system provides genotypic information.

(b) *Classification.* Class II (special controls). The special control is FDA's guidance document entitled ''Class II Special Controls Guidance Document: Drug Metabolizing Enzyme Genotyping Test System.'' See § 862.1(d) for the availability of this guidance document.

Dated: March 2, 2005.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 05–4762 Filed 3–9–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 862

[Docket No. 2005N–0071]

Medical Devices; Clinical Chemistry and Clinical Toxicology Devices; Instrumentation for Clinical Multiplex Test Systems

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying instrumentation for clinical multiplex test systems into class II (special controls). The special control that will apply to the device is the guidance document entitled ''Class II Special Controls Guidance Document: Instrumentation for Clinical Multiplex Test Systems.'' The agency is classifying the device into class II (special controls) in order to provide a reasonable assurance of safety and effectiveness of the device. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice of availability of a guidance document that is the special control for this device.

DATES: This rule is effective April 11, 2005. The classification was effective December 23, 2004.

FOR FURTHER INFORMATION CONTACT: Courtney Harper, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 240–276–0443, ext. 159.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 513(f)(1) of the Federal Food, Drug, and Cosmetic act (the act) (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976, the date of enactment of the Medical Device Amendments of 1976 (the amendments), generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless and until the device is classified or reclassified into class I or II or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously marketed devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807) of FDA's regulations.

Section 513(f)(2) of the act provides that any person who submits a premarket notification under section 510(k) of the act for a device that has not previously been classified may, within 30 days after receiving an order classifying the device in class III under section 513(f)(1) of the act, request FDA to classify the device under the criteria set forth in section 513(a)(1) of the act (21 U.S.C. 360c(a)(1)). FDA shall, within 60 days of receiving such a request, classify the device by written order. This classification shall be the initial classification of the device. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the **Federal Register** announcing such classification (section 513(f)(2) of the act).

In accordance with section 513(f)(1) of the act, FDA issued a notice on October 29, 2004, classifying the Affymetrix GENECHIP Microarray Instrumentation System in class III, because it was not substantially equivalent to a device that was introduced or delivered for introduction into interstate commerce for commercial distribution before May 28, 1976, or to a device that was subsequently reclassified into class I or class II. On November 3, 2004, Affymetrix, Inc., submitted a petition requesting classification of the Affymetrix GENECHIP Microarray Instrumentation System under section 513(f)(2) of the act. The manufacturer recommended that the device be classified into class II.

In accordance with section 513(f)(2) of the act, FDA reviewed the petition in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the act. Devices are to be classified into class II if general controls, by themselves, are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use. After review of the information submitted in the petition, FDA determined that the Affymetrix GENECHIP Microarray Instrumentation System can be classified in class II with the establishment of special controls. FDA believes these special controls, in addition to general controls, will provide reasonable assurance of safety and effectiveness of the device.

The device is assigned the generic name ''instrumentation for clinical multiplex test systems.'' It is identified as a device intended to measure and sort multiple signals generated by an assay from a clinical sample. This instrumentation is used with a specific assay to measure multiple similar analytes that establish a single indicator to aid in diagnosis. Such instrumentation may be compatible with more than one specific assay. The device includes a signal reader unit, and may also integrate reagent handling, hybridization, washing, dedicated instrument control, and other hardware components, as well as raw data storage mechanisms, data acquisition software, and software to process detected signals.

FDA has identified the risks to health associated with this type of device as potentially inaccurate results or inaccurate reports which may lead to incorrect diagnoses or patient evaluation that could result in inappropriate and possibly dangerous patient management. Specifically,

failure of instrument components, including reagent introduction and hybridization systems, signal detection mechanisms, instrument control and data acquisition software, and raw data storage mechanisms could lead to inaccurate results. Likewise, failure of data management and database software could result in the compromise of patient identification or mis-matched results. Furthermore, failure of the instrumentation to generate any results at all can deny or delay beneficial, appropriate therapies.

FDA believes that following the class II special controls guidance document generally addresses the risks to health identified in the previous paragraph. The class II special controls guidance document also provides information on how to meet premarket (510(k)) submission requirements for the device, including recommendations on validation of performance characteristics and labeling. Therefore, on December 23, 2004, FDA issued an order to the petitioner classifying the device into class II. FDA is codifying this classification by adding 21 CFR 862.2570.

Following the effective date of this final classification rule, any firm submitting a 510(k) premarket notification for instrumentation for clinical multiplex test systems will need to address the issues covered in the special controls guidance. However, the firm need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurance of safety and effectiveness.

Section 510(m) of the act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k) of the act if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. For this type of device, however, FDA has determined that premarket notification is necessary to provide reasonable assurance of safety and effectiveness. FDA's review of performance characteristics, test methodology, and labeling to see that it satisfies the requirements of § 807.87(e), will provide reasonable assurance that acceptable levels of performance for both safety and effectiveness will be addressed before marketing clearance. Thus, persons who intend to market this type of device must submit to FDA a premarket notification containing information on the instrumentation for clinical multiplex test systems before marketing the device.

II. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is not a significant regulatory action under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because classification of this device into class II will relieve manufacturers of the device of the cost of complying with the premarket approval requirements of section 515 of the act (21 U.S.C. 360e), and may permit small potential competitors to enter the marketplace by lowering their costs, the agency certifies that the final rule will not have a significant impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $115 million, using the most current (2003) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

IV. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

V. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VI. Reference

The following reference has been placed on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Petition from Affymetrix, Inc., dated November 3, 2004.

List of Subjects in 21 CFR Part 862

Medical devices.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 862 is amended as follows:

PART 862—CLINICAL CHEMISTRY AND CLINICAL TOXICOLOGY DEVICES

■ 1. The authority citation for 21 CFR part 862 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Section 862.2570 is added to subpart C to read as follows:

§ 862.2570 Instrumentation for clinical multiplex test systems.

(a) *Identification.* Instrumentation for clinical multiplex test systems is a device intended to measure and sort multiple signals generated by an assay from a clinical sample. This instrumentation is used with a specific assay to measure multiple similar analytes that establish a single indicator to aid in diagnosis. Such instrumentation may be compatible with more than one specific assay. The device includes a signal reader unit, and may also integrate reagent handling, hybridization, washing, dedicated

instrument control, and other hardware components, as well as raw data storage mechanisms, data acquisition software, and software to process detected signals.

(b) *Classification.* Class II (special controls). The special control is FDA's guidance document entitled ''Class II Special Controls Guidance Document: Instrumentation for Clinical Multiplex Test Systems.'' See § 862.1(d) for the availability of this guidance document.

Dated: March 2, 2005.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 05–4760 Filed 3–9–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010–AD05

Federal Gas Valuation

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: The MMS is amending the existing regulations governing the valuation of gas produced from Federal leases for royalty purposes, and related provisions governing the reporting thereof. The current regulations became effective on March 1, 1988, and were amended in 1996 and 1998. These amendments primarily affect the calculation of transportation deductions and the changes necessitated by judicial decisions since the regulations were last amended.

DATES: *Effective date:* June 1, 2005.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, Lead Regulatory Specialist, Chief of Staff Office, Minerals Revenue Management, MMS, telephone (303) 231–3211, fax (303) 231–3781, or e-mail *sharron.gebhardt@mms.gov*.

The principal authors of this rule are Geoffrey Heath of the Office of the Solicitor, Larry E. Cobb, Susan Lupinski, Mary A. Williams, and Kenneth R. Vogel of Minerals Revenue Management, MMS, Department of the Interior.

SUPPLEMENTARY INFORMATION:

I. Background

The MMS is amending the existing regulations at 30 CFR 206.150 *et seq.*, governing the valuation of gas produced from Federal leases for royalty purposes, and related provisions governing the reporting thereof. The current regulations became effective on March 1, 1988 (53 FR 1230) (1988 Gas Rule).

After conducting several public workshops, MMS issued a proposed rule that was published in the **Federal Register** on July 23, 2004 (69 FR 43944). The comment period for the proposed rule closed on September 21, 2004.

The amendments do not alter the basic structure or underlying principles of the 1988 Gas Rule.

II. Comments on the Proposed Rule

Comments received favored most of the proposed changes. The MMS received some unfavorable comments regarding future valuation agreements between the MMS Director and the lessee, some of the specifications of allowable transportation costs, and our proposal to change the rate of return on undepreciated capital investment in calculating non-arm's-length transportation allowances. Generally, we grouped the comments received and the MMS responses according to the order of the issues and proposed revisions on which we requested comments. We also addressed miscellaneous technical changes.

A. Spot Market Prices

In the proposed rule, we requested comments on (1) ''whether publicly available spot market prices for natural gas are reliable and representative of market value'' and whether MMS should value natural gas production that is not sold at arm's-length using spot market prices and, if so, (2) ''how these spot market prices should be adjusted for location differences between the index pricing point and the lease.''

Summary of Comments: One producer supported using index pricing, stating that index pricing provides the most accurate and transparent gas pricing information available and, therefore, increases royalty valuation certainty.

Industry trade associations supported the use of index pricing for gas valuation and questioned why index pricing does not apply to arm's-length gas sales.

One state and the State and Tribal Royalty Audit Committee (STRAC) did not support using index pricing to value gas. The state claimed that publicly available spot prices are not a true representation of arm's-length market value because non-arm's-length sales are included within the index. The state proposed that MMS publish a new gas rule requiring a Federal lessee to value natural gas and associated products based on the first arm's-length sale of the gas or products.

MMS Response: The written comments received continue to reflect disparate and conflicting views of industry and states. At the present time, MMS has decided not to change existing regulations for valuing production that is not sold at arm's-length and will continue to evaluate the issues.

B. Section 206.150—Purpose and Scope

The MMS proposed to amend the Federal gas valuation rule to match the June 2000 Federal oil valuation rule, which provides that, if a written agreement between a lessee and the MMS Director establishes a production valuation method for any lease that MMS expects at least would approximate the value otherwise established under this subpart, the written agreement will govern to the extent of any inconsistency with the regulations. This provision is intended to provide flexibility to both MMS and the lessee in those few unusual circumstances where a separate written agreement is reached, while at the same time maintaining the integrity of the regulations. The MMS used this provision in the June 2000 Federal oil valuation rule to address unexpectedly difficult royalty valuation problems.

Summary of Comments: Industry producers and industry trade associations support this change.

Two states and STRAC do not support the use of written valuation agreements. One state commented that it is not in the public's best interest to allow the MMS Director to avoid the regulations that are subject to notice and comment. The states claimed that, at the very minimum, state approval should be necessary if this provision is implemented. STRAC commented that the provision is not clear and that state approval should be required if state royalties are affected.

MMS Response: The MMS is mindful of the states' concerns, but does not believe that written valuation agreements should be subject to state approval (or veto). Such agreements are not an avenue to avoid the rules, but rather a tool to provide certainty and reduce administrative costs in appropriate circumstances. The rule requires that value under such an agreement at least approximate the value that would be derived under the regulations. Therefore, these agreements should not result in significant revenue consequences to the Federal Government or to the states.

C. Section 206.151—Definitions

The MMS proposed adding a definition of ''affiliate'' and revising the definition of ''arm's-length contract'' to

be identical to the June 2000 Federal oil valuation rule, as amended, and to conform the Federal gas valuation rule with the DC Circuit holding of *National Mining Association* v. *Department of the Interior*, 177 F.3d 1 (DC Cir. 1999). The MMS proposed revising the definition of ''affiliate'' separately from the definition of ''arm's-length contract'' as in the June 2000 Federal oil valuation rule, as amended, to clarify and simplify the definitions.

The MMS also proposed to revise the definition of ''transportation allowance'' to be consistent with the June 2000 Federal oil valuation rule with necessary changes in wording to apply it in the gas context. Finally, MMS proposed to revise the definition of ''processing allowance'' to make it consistent with other allowance definitions.

Summary of Comments: Industry producers and industry trade associations supported the addition of ''affiliate'' but requested further clarification of the term ''opposing economic interests'' used in the definition of ''affiliate.'' One trade association urged MMS to adopt a presumption of opposing economic interests where common ownership is less than the 50 percent threshold in the definition of ''affiliate'' for transportation and processing affiliates. One state also supported the proposed change to ''affiliate.''

One state supported the definition of ''transportation allowance,'' but not ''to the extent it could be applied inconsistent [sic] with the marketability rule, such as providing for an allowance for the movement of unprocessed gas to a point of delivery off-lease, if that point of delivery is a gas plant or gas treating facility.'' One industry trade association recommended that the adoption of the revision be prospective only.

No comments were received on the definition of ''processing allowance.''

One state and STRAC suggested that the ''marketing affiliate'' definition should be removed from the regulations. Another state requested that the word ''only'' be replaced with ''any of'' in the definition of ''marketing affiliate'' to require valuation based on downstream re-sales. One industry producer requested that MMS revise the definition of ''gathering,'' stating that disallowing gathering costs is overly restrictive. One industry trade association requested a better definition of ''line loss.''

MMS Response: In addition to the fact that the proposed gas rule did not include a discussion of the meaning of ''opposing economic interests,'' the question of whether two parties have opposing economic interests depends on the facts of a particular situation. The MMS does not believe that opposing economic interests should be presumed simply because there may be less than 50 percent common ownership between two entities.

The MMS has modified the wording of the second paragraph of the proposed definition of ''affiliate'' to change the phrase ''between 10 and 50 percent'' ownership or common ownership to ''10 through 50 percent'' to be consistent with the June 2000 Federal oil valuation rule, as amended.

Contrary to the comment by one state commenter, the definition of ''transportation allowance'' is not inconsistent with the marketable condition rule. The commenter's view that there should be no transportation allowance for the movement of unprocessed gas to an off-lease delivery point if that point is a gas plant is contrary to 30 CFR 206.156(a), which allows a deduction for the reasonable actual costs incurred by the lessee to transport gas * * * from a lease to a point off the lease, including, if appropriate, transportation from the lease to a gas processing plant off the lease * * *.'' The state's comment reflects a view that the relationship between transportation allowances and the marketable condition rule should be fundamentally changed. That suggestion is beyond the scope of the proposal. The proposed change to the definition of ''transportation allowance,'' as explained in the preamble to the proposed rule (69 FR 43946), was to make its wording consistent with the June 2000 Federal crude oil valuation rule and return it to being substantively the same as the original 1988 rule's definition, with the objective of correcting an inadvertent error that the 1996 amendment put into the wording. That change is adopted in the final rule.

The change to the wording of the definition of ''transportation allowance'' is prospective. However, it reflects how the rule has been applied in practice since the 1988 Gas Rule, even after the 1996 amendment to that rule.

The suggestion to eliminate the definition of ''marketing affiliate,'' and the suggestion to change the wording of that definition, are beyond the scope of the proposed gas rule. The suggestion of the industry commenter that gathering costs be deductible and the recommendation to provide a more detailed definition of line loss also are beyond the scope of the proposed gas rule.

D. Section 206.157 Determination of Transportation Allowances Rate of Return Used in Non-Arm's-Length Cost Calculations

The MMS proposed an amendment to § 206.157(b)(2)(v) governing calculation of actual transportation costs in non-arm's-length situations by changing the allowed rate of return on (1) undepreciated capital investment or (2) initial investment from 1.0 times the Standard & Poor's BBB bond rate to 1.3 times the Standard & Poor's BBB bond rate.

Summary of Comments: Industry producers and one industry trade association supported the change but asserted that 1.3 times the Standard & Poor's BBB bond rate understates the cost of capital for gas pipelines. Based on a study from the American Petroleum Institute (API), industry argued that, although pipelines are not as risky as drilling wells, some risk is involved, and that the allowable rate of return should be between 1.6 and 1.8 times the Standard & Poor's BBB bond rate.

The states and STRAC opposed the change. One state argued that the rate of return is a profit element and requested that MMS apply the rate of return only to non-arm's-length transportation arrangements for Federal offshore production if the change is implemented. STRAC also suggested that the proposed rate of return apply only to offshore production.

Another state and STRAC asserted that interest rates have hit all time lows and there is no reason to implement the proposed change. As part of STRAC's comments, an Indian tribe suggested that increasing the rate of return on Federal leases may give companies an argument to increase the rate of return on Indian leases.

The congressional commenter opposed the proposed change, stating that it would allow the weighted average cost of capital as the rate of return for the calculation of gas transportation allowances as requested by the oil and gas industry.

MMS Response: The MMS has examined rates of return in the oil and gas industry and believes that some weighted average rate of return considering both equity and debt is appropriate as an actual market-based cost of capital. An investor will choose to have a mix of debt and equity for many reasons, not the least of which is that companies that choose to finance their investments solely by debt will pay a higher interest rate due to the increased risk on the part of the creditor. Both debt and equity costs are

actual costs of capital. The choice of Standard & Poor's BBB bond rate in 1988 was made, at least in part, in recognition of some equity component because the majority of companies with non-arm's-length transportation arrangements have debt costs lower than the Standard & Poor's BBB bond rate.

The MMS continues to believe that establishing a uniform rate of return on which all parties can rely is preferable to the costs, delays, and uncertainty inherent in attempting to analyze appropriate project-specific or company-specific rates of return on investment. The MMS, through its Economics Division, Offshore Minerals Management, has studied several years' worth of data for both non-integrated oil and gas transportation companies and larger oil and gas producers, both integrated and independent, that MMS believes are more likely to invest in gas pipelines.

After a thorough review of the MMS and API studies, and consideration of the comments submitted by states and industry, we believe that the allowance for the rate of return on capital should be 1.3 times the Standard & Poor's BBB bond rate. This rate is the mid-point of the range suggested by the MMS study, which concluded that the range of rates of return appropriate for gas pipelines would be in the range of 1.1 to 1.5 times the Standard & Poor's BBB bond rate. The MMS also believes that, although there are some very high risks involved with certain oil and gas ventures, such as wildcat drilling, the risk associated with building and developing a pipeline to move gas that has already been discovered is much less and of a different nature. Both the MMS study and the data from the Energy Information Administration (EIA) demonstrate that the market also perceives that the risk is lower in the transportation lines of business than in the exploration and production lines of business.

The MMS believes that the study conducted by its Economics Division, Offshore Minerals Management, used the most relevant data for a reasonable period and, therefore, is the best source to decide on the appropriate rate of return.

The MMS does not believe that there is any basis to apply the 1.3 times the Standard & Poor's BBB bond rate of return only to offshore leases. We have no evidence that rates of return for onshore pipelines are significantly different than for offshore pipelines.

The fact that interest rates are currently relatively low is irrelevant. As interest rates rise or fall, the Standard & Poor's BBB bond rate will rise or fall.

The royalty valuation for gas produced from Indian leases is now based on different rules than valuation of gas produced from Federal leases. Gas produced from Indian leases is valued primarily on the basis of index prices, and the rate of return is irrelevant because producers are allowed a 10 percent fixed deduction (with limitations). For gas produced from non-index zones, or from leases for which the tribe has elected not to use index-based valuation, there is a potential effect from changing the rate of return on Federal leases. If MMS proposes changes to the Indian gas valuation rule in the future, it would be appropriate to address the issue in that context.

Finally, MMS has retained the proposed wording of paragraph (b)(2)(v), which is the same as the wording in the current rule except to change the rate of return. The wording of paragraph (b)(2)(v) is not identical to the wording of the equivalent provision in the Federal oil valuation rule, as amended, at 30 CFR 206.111(i)(2). The MMS intends that the two provisions have the same effect, namely, that the rate of return must be re-determined at the beginning of each calendar year.

E. Comments Requested on Changing the Rate of Return for Non-Arm's-Length Processing Cost Calculations

The MMS requested comments on changing the rate of return in § 206.159 (b)(2)(v) for non-arm's-length processing cost calculations to gather more information. The MMS Economics Division, Offshore Minerals Management, study of gas pipeline costs of capital did not study the impact of changing the rate of return for non-arm's-length processing cost calculations.

Summary of Comments: Industry trade associations urged MMS to implement the same rate of return for processing cost calculations based on the fact that the cost of capital to an oil and gas company is the same, irrespective of its use. They stated that 1.3 times Standard & Poor's BBB bond rate is conservative and understates the cost of capital.

One state and STRAC recommended that MMS not change the rate of return for non-arm's-length processing cost calculations. STRAC stated that, if the increase is implemented, MMS should retain the Standard & Poor's BBB bond rate, with no multiplier, for gas produced from onshore leases.

MMS Response: In the preamble of the proposed rule, MMS stated that it ''welcomes comments, data, and analysis'' on the issue of whether the same rate of return that applies in non-arm's-length transportation cost calculations also should apply in non-arm's-length processing cost calculations (69 FR 43947). The MMS explained that, if it ''obtains sufficient information and data through the comment process to support a change,'' it may change the rate of return for non-arm's-length processing cost calculations. *Id.* While industry suggested applying the 1.3 times the Standard & Poor's BBB bond rate to calculation of non-arm's-length processing allowances, no commenter submitted any information or data that would support changing the current processing allowance rate. Industry did suggest that an industry-wide rate of return should be used. As MMS explained in the discussion of transportation rates of return, MMS believes that it is appropriate to use different rates of return for different industry lines of business. It is clear that the risk in exploration and development is greater than the risks in transportation or processing. The MMS was able to study rates of return in the transportation segment, but the study did not extend to processing rates of return. Therefore, we are not adopting any changes to the rate of return used in calculating processing allowances.

F. Section 206.157(b)(5)—Determination of Transportation Allowances—Alternatives to Actual Cost Calculation

The proposed provision would allow lessees to apply for an exception to the requirement to calculate actual costs in non-arm's-length transportation situations if the lessee has a tariff approved by the Federal Energy Regulatory Commission (FERC) or a state regulatory agency that FERC or the state agency has either adjudicated or specifically analyzed, and third parties are paying prices under the tariff to transport gas under arm's-length transportation contracts.

Summary of Comments: One state, two industry trade associations, and STRAC supported the proposed changes. One industry trade association suggested extending the 2-month production period to 3 or 6 months to avoid frequent switching back and forth between calculating actual costs and using third-party tariff rates. The state commented that, if the exception based on the weighted average of rates paid by third parties is used, it be limited to the rates used for ''like quantities'' (presumably meaning quantities similar to those transported under the non-arm's-length arrangement).

One industry association commented that the addition of the need for the tariff to be adjudicated or specifically

analyzed should be clarified or eliminated because it was unclear as to how this requirement would be applied. The association also commented that producers should be allowed to use the exception once it was applied for, without the need for MMS approval.

Two states, one industry trade association, and the congressional commenter opposed the proposed changes. One state commented that MMS does not have the same FERC or state business perspective, and MMS should not move away from basing non-arm's-length transportation charges on actual costs. Another state commented that the use of tariffs for non-arm's-length transportation allowances should be deleted. The industry trade association commented that the current FERC-or state-approved tariffs are fair and reasonable transportation charges and provide certainty to industry and the MMS. The industry trade association also asserted that the proposal is in direct opposition to FERC Order 2004–A.

MMS Response: As MMS explained in 1988, when it first adopted an exception from the requirement to use actual costs in non-arm's-length transportation arrangements, MMS believed that it was reasonable to rely on another regulatory agency with jurisdiction over the prices charged. Since that time, MMS has noted several problems with simply deferring to FERC or state regulatory agencies. First, MMS realized that the requirements for granting an exception under the current rule were burdensome and difficult to apply. Second, MMS now understands that many pipelines grant discounts to their tariffs, and there is no reason for a non-arm's-length shipper to be able to deduct more than the arm's-length shippers can deduct, nor more than its actual payment or transfer price to its affiliated pipeline. Lessees have always been limited to ''actual,'' as well as ''reasonable'' costs.

The MMS agrees that it may be difficult for lessees to know when or if a transportation tariff has been ''approved'' or ''adjudicated or specifically analyzed.'' Therefore, MMS has changed the language of the exception in the final rule to more closely follow the FERC procedures. The regulation now requires that the tariff be filed and that the FERC or state regulatory agency has permitted the tariff to become effective.

The MMS does agree that limiting the ability to use the exception for 2 months following the last arm's-length transaction may be unduly restrictive. While transportation arrangements normally are stable, MMS believes that it is possible for shippers to stop shipping for as long as a heating season. Heating season sales contracts typically last for 5 months. Therefore, MMS is adjusting the ability of a non-arm's-length shipper to use the exception for 5 months following the last arm's-length transaction. The MMS has also changed the wording of subparagraphs (b)(5)(ii) and (iii) to specify which rate to use in determining a transportation allowance under the exception and to eliminate duplicative language in the proposed rule.

The MMS does not believe it is appropriate for lessees to use this exception without MMS approval. The MMS believes that it needs to know when companies intend to use this exception so that it can monitor which method a company is using, and verify that the tariff has become effective. Under this exception, MMS may retroactively approve an allowance as far back as the date the tariff is filed, so there is no loss to the lessee. Because MMS now pays interest on overpayments, the lessee will not experience a loss of the time value of money.

The MMS does not believe it is practical to try to find arm's-length transportation contracts of ''like quantity.'' Even though it is likely that the non-arm's-length shippers may ship much larger quantities than the arm's-length shippers, MMS believes that it is reasonable to use the weighted average of all arm's-length contracts. The MMS does not believe that FERC Order 2004–A interferes with the ability of a producer to comply with the requirement to know the prices charged to arm's-length shippers. The Order specifically requires the pipeline to publish all relevant information about each discount given, including rate, execution date, length of contract, quantity scheduled, etc. If a lessee cannot determine the actual volumes shipped under these arm's-length contracts, the lessee may use the published maximum daily quantities as a proxy for actual volumes. Also, the lessee may propose to MMS an alternate method of calculating the weighted average price received by the pipeline affiliate for arm's-length shipments under a tariff for a pipeline segment.

On the other hand, FERC Order 2004–A does seem to make it more difficult for a lessee to know its affiliated pipeline's actual costs unless the pipeline shares that information with the public. The MMS's requirement to use actual costs pre-dates the new FERC information-sharing restrictions and no one either protested the Order on this ground or informed MMS that the Order would interfere with compliance with the Federal gas valuation rule. The MMS does not plan to change the requirement to use actual costs and will work with any lessee that is unable to compute actual costs under the existing regulation. To make clear the ability of a regulated pipeline to share the data necessary for an affiliated lessee to accurately report its transportation deduction, whether it is based on actual costs or on the weighted average of arm's-length transactions, MMS intends to petition the FERC for a declaratory order, which would specify the parameters of the authority of regulated pipelines to share information with MMS and with their affiliated lessee.

G. Section 206.157(c)—Transportation Allowances—Reporting Requirements

The MMS proposed eliminating the requirement to report separate line entries for allowances on the Form MMS–2014 because MMS modified the form in 2001. The MMS also proposed rewording new paragraph (c) to be consistent with the June 2000 Federal oil valuation rule regarding reporting requirements for arm's-length and non-arm's-length transportation contracts, respectively. The MMS further proposed adding new paragraphs (c)(1)(iii) and (c)(2)(v) to expressly clarify that the allowances that were in effect when the 1988 Gas Rule became effective, and that were ''grandfathered'' under former paragraphs (c)(1)(v) and (c)(2)(v), have been terminated.

Summary of Comments: One industry trade association commented that it supports the proposed changes, although it supports the removal of the ''grandfather'' clause prospectively. One state and STRAC support removing the ''grandfather'' clause.

MMS Response: The ''grandfather'' clause was removed in the 1996 amendment, but subsequent litigation arose regarding whether the removal of the ''grandfather'' clause was validly accomplished. The amendment made in this final rule eliminates any further question in this regard by clearly ending any grandfathering provision.

H. Section 206.157(f)—Transportation Allowances—Specifying Allowable Costs

MMS proposed to amend section 206.157(f) in several respects to further clarify what costs are deductible in calculating transportation allowances. The proposed changes are listed individually below with specific comments associated with each change.

Summary of Comments: One state commented that unused firm demand charges and costs of surety are indirect costs and should not be deductible. A

public interest group and an individual commented that the Government would suffer revenue losses from these changes. These losses would be caused, in their view, by allowing the gas industry to deduct new transportation costs that are not directly related to operating and maintaining a pipeline. STRAC commented that ''unused firm capacity/firm demand charges, line loss and cost of surety'' are ''already paid for under the 7/8ths interest.''

MMS Response: The MMS will respond to these general comments below with respect to each specific provision.

1. Section 206.157(f)(1)—Transportation Allowances—Specifying Allowable Costs—Allow Unused Firm Demand Charges

The MMS proposed to add unused firm demand charges as allowable transportation costs under § 206.157(f)(1) to conform with the DC Circuit's decision in *IPAA* v. *DeWitt,* 279 F.3d 1036 (DC Cir. 2002), *cert. denied,* 537 U.S. 1105 (2003). The proposed rule also provided for reduction of previously reported transportation allowances whenever the lessee sells unused firm capacity after having deducted it as part of a previously reported allowance.

Summary of Comments: Two industry trade associations and one producer supported this change. One state, an individual commenter, a public interest group, and STRAC opposed the change with respect to allowing unused firm demand charges.

MMS Response: As MMS explained in the preamble to the proposed rule, in its 1998 rulemaking, MMS had prohibited the deduction of unused firm demand charges. In *IPAA* v. *DeWitt,* while the DC Circuit upheld every other aspect of the 1998 rulemaking, it determined that MMS did not demonstrate that unused demand charges were not transportation. Therefore it held that MMS was required to allow the deduction of unused demand charges. The IPAA sought review of the rest of the case, which was denied, but the government did not seek further review of that decision. The MMS therefore must change the gas rule to conform to the court's decision. The final rule is also intended to be consistent with the Federal oil valuation rule, as amended.

2. Section 206.157(f)(7)—Transportation Allowances—Specifying Allowable Costs—Allow Fees Paid for Actual Line Losses Under Non-Arm's-Length Contracts

The proposed rule specified actual line losses as a cost of moving production. Theoretical line losses would be allowed only in arm's-length transportation situations.

Summary of Comments: Two industry trade associations support the change. Two states and the congressional commenter oppose the proposed change. One state believes that line losses are indirect costs that result from metering differences and are very inaccurate.

MMS Response: The MMS believes that actual line losses properly may be regarded as a cost of moving production. In addition, if there is line gain, the lessee must reduce its transportation allowance accordingly. In a non-arm's-length situation, however, a charge for theoretical line losses would be artificial and would not be an actual cost to the lessee. While a lessee may have to pay an amount to a pipeline operator for theoretical line losses as part of an arm's-length tariff, in a non-arm's-length situation, line losses, like other costs, should be limited to actual costs incurred. However, if a non-arm's-length transportation allowance is based on a FERC- or state regulatory-approved tariff that includes a payment for theoretical line losses, that cost would be allowed, as the current rule already provides.

3. Section 206.157(f)(10)—Transportation Allowances—Specifying Allowable Costs—Allow the Cost of Securing a Letter of Credit or Other Surety Required by the Pipeline Under Arm's-Length Contracts

The proposed rule would allow the cost of securing a letter of credit or other surety, insofar as those costs are currently allocable to production from Federal leases, in arm's-length transportation situations and are necessary to obtain the pipeline's transportation services.

Summary of Comments: One industry trade association supports the change. Two states, STRAC, and the congressional commenter oppose the proposed change. One state commented that, if MMS allows a cost of surety, it erodes the valuation associated with the Federal Government's royalty interest and ''increases the profit margin associated to [sic] the working interest'' because this type of cost is a ''service fee'' that historically has not been deductible. One state and STRAC commented that MMS historically has not allowed service-type fees that are associated with the lessee's responsibility to market the production at no cost to the lessor and that this change should not be allowed.

MMS Response: As explained in the preamble to the proposed rule, MMS believes that this is a cost that the lessee must incur to obtain the pipeline's transportation service, and therefore is a cost of moving the gas. The view of state commenters and STRAC that this type of cost is a ''service fee'' does not address whether incurring the cost is necessary to transport production. Contrary to the view of one state and STRAC, MMS does not believe that the cost of obtaining a letter of credit or other surety is a cost associated with marketing the production. The costs necessary to market the production do not depend on whether a pipeline requires a letter of credit.

As explained in the preamble to the proposed rule, in non-arm's-length situations, MMS believes that requiring a letter of credit from an affiliated producer is unnecessary and that the corporate organization ordinarily would avoid incurring the costs of the premium necessary for the letter of credit. The MMS therefore believes it is inappropriate to allow such a deduction under non-arm's-length transportation arrangements.

I. Section 206.157(g)—Transportation Allowances—Specifying Non-Allowable Costs (Fees Paid to Brokers, Fees Paid to Scheduling Service Providers, and Internal Costs)

Summary of Comments: Two states and STRAC supported the clarifications. The MMS received no comments opposing these clarifications.

MMS Response: As explained in the preamble to the proposed rule, fees paid to brokers include fees paid to parties who arrange marketing or transportation, if such fees are separately identified from aggregator/marketer fees. The MMS believes such fees are marketing costs and are not actual costs of transportation.

Fees paid to scheduling service providers, if such fees are separately identified from aggregator/marketer fees, are marketing or administrative costs that lessees must bear at their own expense and are not actual costs of transportation because, unlike the surety charges, the pipeline does not require that they be paid.

Internal costs, including salaries and related costs, rent/space costs, office equipment costs, legal fees, and other costs to schedule, nominate, and account for sale or movement of production, have never been deductible. The final rule reaffirms this principle.

J. Other Comments on Allowable or Non-Allowable Costs

Summary of Comments: Two industry trade associations questioned why ''line pack'' is not an allowable transportation

cost. One industry trade association requested that the transportation costs attributable to excess carbon dioxide, where it is necessary to transport the carbon dioxide entrained in the main gas stream before disposal as a waste product, be allowable transportation costs.

MMS Response: With respect to ''line pack,'' the commenters did not provide any examples in which lessees had actually been charged for line pack as an actual cost of transportation, nor does MMS know of any such situations.

The trade association's comment regarding ''excess CO_2'' appears to misunderstand the current rule at 30 CFR 206.157(a)(2)(i), which provides that no allowance may be taken for the costs of transporting lease production which is not royalty bearing without MMS approval. The ''excess CO_2'' removed at a treatment plant is a non-royalty-bearing product. The transportation pipeline will not transport the gas unless the CO_2 is removed. So if the CO_2 is not removed the gas cannot be marketed. The increment of CO_2 allowed in a transportation pipeline (*e.g.,* 2 percent) is a ''waste product.'' The cost of transporting the ''waste product'' increment is allowed as part of the cost of transporting gas, while the cost of transporting the non-royalty-bearing product is not. The location at which a lessee chooses to treat production for removal of CO_2 is up to the lessee. If the lessee treats production at a location away from the lease, transporting the excess CO_2 to that location is part of the costs of putting the production into marketable condition and, therefore, is not deductible.

K. Other Comments

Summary of Comments: An industry trade association requested to be able to use the prior year's actual costs in the current year to eliminate reporting of retroactive adjustments on the Form MMS–2014. The association noted that companies must report estimates until actuals are calculated and then reverse previous lines.

MMS Response: This comment and issues related to it are beyond the scope of the proposed rule, and addressing these issues would require initiation of new rulemaking proceedings.

III. Procedural Matters

1. Summary Cost and Royalty Impact Data

Summarized below are the annual estimated costs and royalty impacts of this rule to all potentially affected groups: industry, the Federal Government, and state and local governments. The MMS did not receive any specific comments regarding the estimated costs and royalty impacts of this rule when it was proposed in the **Federal Register** July 23, 2004 (69 FR 43944). The costs and royalty impact estimates have changed since the proposed rule due to further analysis.

Of the changes being implemented under this rulemaking that have cost impacts, some will result in royalty decreases for industry, states, and MMS, and two changes will result in a royalty increase. The net impact of the changes will result in an expected overall royalty increase of $2,251,000, as itemized below.

A. Industry

(1) *No Change in Royalties—Allow Transportation Deduction for Unused Firm Demand Charges.*

Under this rule, industry is allowed to deduct the portion of firm demand charges it paid ''arm's-length'' to a pipeline, but did not use. Currently, following the decision of the DC Circuit in *IPAA* v. *DeWitt,* industry may already deduct these charges. In the proposed rule, MMS estimated a revenue decrease from this provision. The MMS now realizes that this provision is merely codifying existing law and no royalty change is effected by this clarification.

(2) *Net Decrease in Royalties—Increase Rate of Return in Non-Arm's-Length Situations From 1 Times the Standard & Poor's BBB Bond Rate to 1.3 Times the Standard & Poor's BBB Bond Rate.*

The total transportation allowances deducted by Federal lessees from gas royalties for FY 2002 were approximately $103,789,000 for both onshore and offshore leases. While MMS does not maintain data or request information regarding the percentage of transportation allowances that fall under either the arm's-length or non-arm's-length category, we believe that gas, unlike oil, is typically transported through interstate pipelines not affiliated with the lessee. Therefore, we estimate that 75 percent of all gas transportation allowances are arm's-length.

We also assumed that over the life of the pipeline, allowance rates are made up of 1/3 rate of return on undepreciated capital investment, 1/3 depreciation expenses and 1/3 operation, maintenance and overhead expenses (these are the same assumptions used in the recent threshold analysis for the 2004 Federal oil valuation rulemaking). Based on total gas transportation allowance deductions of $103,789,000 for FY 2002, the percentage of non-arm's-length gas transportation allowances and our assumptions regarding the makeup of the allowance components, the portion of allowances attributable to the rate of return will be approximately $8,649,000 ($103,789,000 × .25 × .3333). Therefore, we estimated that increasing the basis for the rate of return by 30 percent could result in additional allowance deductions of $2,594,725 ($8,649,000 × .30). That is, the net decrease in royalties paid by industry will be approximately $2,595,000.

(3a) *Net Decrease in Royalties—Allow Line Loss as a Component of a Non-Arm's-Length Transportation Allowance.*

For this analysis, we assumed that gas pipeline losses are 0.2 percent of the volume transported through the pipeline. However, the cost of the line loss is calculated based on the value of the gas transported, not on the cost or rate of its transportation. Therefore, the 0.2 percent line loss volume implies a 0.2 percent decrease in the royalty owed on Federal gas subject to transportation. For FY 2002, the royalty reported prior to allowances, for those leases in which a transportation allowance was reported, was approximately $2,506,447,000. Assuming 25 percent of that amount corresponds to gas that was transported under non-arm's-length transportation arrangements, the decrease due to line loss would be $1,253,224 ($2,506,447,000 × .25 × .002), or approximately $1,253,000, annually.

(3b) *Net Decrease in Royalties—Allow the Cost of a Letter of Credit as a Component of an Arm's-Length Transportation Allowance.*

The MMS understands that the cost of a letter of credit generally is based on the volume of gas transported through a pipeline under arm's-length transportation contracts and the creditworthiness of the shipper. We first determined that, based on the total sales volume of gas from Federal onshore and offshore leases of 5,822,000,000 Mcf for FY 2002, approximately 4,892,000,000 Mcf was not taken as Royalty in Kind (RIK). Then we estimated that 80 percent of 4,892,000,000 Mcf from Federal onshore and offshore leases is subject to a transportation allowance and the average onshore and offshore royalty rate is 13.55 percent. Therefore, the portion corresponding to the royalty percentage of the Federal gas sales volume subject to a transportation allowance will be approximately 530,000,000 Mcf (4,892,000,000 × .80 × .1355). Next, we assumed that 75 percent of that volume will be transported at arm's length, and that

typical letter of credit costs will be the cost of transporting 2 months' volume (⅙ of the annual volume) at a rate of $0.03 per Mcf. Finally, we assumed that only 20 percent of those shippers (by volume) did not meet the pipeline credit standards and were required to post a letter of credit, because most Federal gas is transported by major oil and gas corporations with A or higher credit ratings. Therefore, the net decrease in royalties will be approximately $398,000 (530,000,000 × .75 × ⅙ × $0.03 × .2) annually.

Total Net Decrease in Royalties—Industry.

$2,595,000 + $1,253,000 + 398,000 = $4,246,000.

(4) *Net Increase in Royalties—Restrict Use of FERC Tariff Charges.*

The MMS has received 94 requests to date to use FERC-approved gas tariffs as an exception to non-arm's-length transportation costs. When approved, these exceptions will continue year after year. For this revenue impact analysis, we assumed that 50 percent of the non-arm's-length allowances are based on a FERC tariff. We are not aware of any state-approved tariffs being used. Because we do not have any data suggesting what the average FERC tariff rate will be nationwide, due to significantly varying market conditions, location differences, and a myriad of tariff structures, we estimated that a reasonable discounted rate that will be paid under the FERC tariff will be 90 percent of the full tariff rate. Therefore, under the new provision, lessees will be allowed to deduct only 90 percent of the tariff rate, instead of 100 percent, a 10 percent reduction in the reported allowance amount. Using these assumptions (including the assumption that 25 percent of reported transportation allowances are non-arm's-length), we estimate that royalties will therefore increase by about $1,297,000 annually ($103,789,000 × .25 × .5 × .1 = $1,297,000).

(5) *Net Increase in Royalties—Eliminate ''Grandfather'' Clause.*

MMS believes that there are few instances of continuing use of valuation determinations that were in effect before 1988 and continued to be in effect under the 1988 Gas Rule. From our audit work on these leases for FY 2002, MMS estimates that royalties will increase under this rule by approximately $5,200,000 annually.

Total Net Increase in Royalties—Industry.

$1,297,000 + $5,200,000 = $6,497,000.

B. State and Local Governments

This rule will not impose any additional burden on local governments.

States receiving a portion of royalties from offshore leases located within the zone defined and governed by section 8(g) of Outer Continental Shelf Lands Act, 43 U.S.C. 1337(g), will share in a portion of the increased or decreased royalties resulting from transportation allowances claimed by industry. To determine the impact for these ''8(g) states,'' we used a factor of .505 (the portion of gas transportation allowances attributable to offshore production) multiplied by a factor of .0061 (the portion of offshore Federal revenues disbursed to states for section 8(g) leases) to arrive at a factor of .0030805 that we then applied to the net increases or decreases resulting from the calculations in paragraph A.

Onshore states will also share in a portion of the increased or decreased royalties resulting from transportation allowances claimed by industry. To determine the impact on onshore States, we used a factor of .495 (the portion of gas transportation allowances attributable to onshore production) multiplied by a factor of .5 (the approximate overall portion of onshore Federal revenues disbursed to states) to arrive at a factor of .2475 that we then applied to the net increases or decreases resulting from the calculations in paragraph A.

(1) *Net Decrease in Royalties—Allow Transportation Deduction for Unused Firm Demand Charges.*

There is no impact.

(2) *Net Decrease in Royalties—Increase Rate of Return in Non-Arm's-Length Situations From 1 Times the Standard & Poor's BBB Bond Rate to 1.3 Times the Standard & Poor's BBB Bond Rate.*

$2,595,000 × .0030805 = $8,000 (for OCS 8(g) states) + $2,595,000 × .2475 = $642,000 (for onshore states) = $650,000.

(3a) *Net Decrease in Royalties—Allow Line Loss as a Component of a Non-Arm's-Length Transportation Allowance.*

$1,253,000 × .0030805 = $4,000 (for OCS 8(g) states) + $1,253,000 × .2475 = $310,000 (for onshore states) = $314,000.

(3b) *Net Decrease in Royalties—Allow the Cost of a Letter of Credit as a Component of an Arm's-Length Transportation Allowance.*

$398,000 × .0030805 = $1,000 (for OCS 8(g) states) + $398,000 × .2475 = $99,000 (for onshore states) = $100,000.

Total Net Decrease in Royalties—States.

$650,000 + $314,000 + $100,000 = $1,064,000.

(4) *Net Increase in Royalties—Restrict Use of FERC Tariff Charges.*

$1,297,000 × .0030805 = $4,000 (for OCS 8(g) states) + $1,297,000 × .2475 = $321,000 (for onshore states) = $325,000.

(5) *Net Increase in Royalties—Eliminate ''Grandfather'' Clause.*

$5,200,000 × .5 = $2,600,000 (for onshore states only).

Total Net Increase in Royalties—States.

$325,000 + $2,600,000 = $2,925,000.

The total impact on all states will be a revenue increase of approximately $1,861,000 ($2,925,000–$1,064,000) annually.

C. Federal Government

The Federal Government, like the states, will be affected by a net overall increase in royalties as a result of the changes to the regulations governing transportation allowance computations and the changes effected by § 206.157(c), eliminating the ''grandfather'' clause. In fact, the royalty increase experienced by the Federal Government will be the difference between the total increased royalty obligations on the industry and the portion of the royalty increase that benefits the states. In other words, the royalty increase to industry will be shared proportionately between the states and the Federal Government as computed below.

(1) *Net Decrease in Royalties—Allow Transportation Deduction for Unused Firm Demand Charges.*

There is no impact.

(2) *Net Decrease in Royalties—Increase Rate of Return in Non-Arm's-Length Situations From 1 Times the Standard & Poor's BBB Bond Rate to 1.3 Times the Standard & Poor's BBB Bond Rate.*

$2,595,000 (total decrease)—$650,000 (states' share) = $1,945,000.

(3a) *Net Decrease in Royalties—Allow Line Loss as a Component of a Non-Arm's-Length Transportation Allowance.*

$1,253,000 (total decrease) – $314,000 (states' share) = $939,000.

(3b) *Net Decrease in Royalties—Allow the Cost of a Letter of Credit as a Component of an Arm's-Length Transportation Allowance.*

$398,000 (total decrease) – $100,000 (states' share) = $298,000.

Total Net Decrease in Royalties—Federal Government.

$1,945,000 + $939,000 + $298,000 = $3,182,000.

(4) *Net Increase in Royalties—Restrict use of FERC Tariff Charges.*

$1,297,000 (total increase) − $325,000 (states' share) = $972,000.

(5) *Net Increase in Royalties—Eliminate ''Grandfather'' Clause.*

$5,200,000 (total increase) − $2,600,000 (states'' share) = $2,600,000.

Total Net Increase in Royalties—Federal Government.

$972,000 + $2,600,000 = $3,572,000.

The net impact on the Federal Government will be a royalty increase of approximately $390,000 ($3,572,000 − $3,182,000) annually.

D. Summary of Costs and Royalty Impacts to Industry, State and Local Governments, and the Federal Government

In the table, a negative number means a reduction in payment or receipt of royalties or a reduction in costs. A positive number means an increase in payment or receipt of royalties or an increase in costs. The net expected change in royalty impact is the sum of the royalty increases and decreases.

SUMMARY OF COSTS AND ROYALTY IMPACTS

Description	Annual costs and royalty increases or royalty decreases
A. Industry:	
(1) Royalty Decrease—Allowable Transportation Deductions (1–3)	−$4,246,000
(2) Royalty Increase—Restrict use of FERC Tariff Charges and Eliminate ''Grandfather'' Clause (4–5)	6,497,000
(3) Net Expected Change in Royalty Payments from Industry	2,251,000
B. State and Local Governments:	
(1) Royalty Decrease—Allowable Transportation Deductions (1–3)	−1,064,000
(2) Royalty Increase ''Restrict use of FERC Tariff Charges and Eliminate ''Grandfather'' Clause (4–5)	2,925,000
(3) Net Expected Change in Royalty Payments to States	1,861,000
C. Federal Government:	
(1) Royalty Decrease—Allowable Transportation Deductions (1–3)	−3,182,000
(2) Royalty Increase—Restrict use of FERC Tariff Charges and Eliminate ''Grandfather'' Clause (4–5)	3,572,000
(3) Net Expected Change in Royalty Payments to Federal Government	390,000

2. Regulatory Planning and Review, Executive Order 12866

Under the criteria in Executive Order 12866, this rule is not an economically significant regulatory action as it does not exceed the $100 million threshold. The Office of Management and Budget (OMB) has made the determination under Executive Order 12866 to review this rule because it raises novel legal or policy issues.

1. This rule will not have an annual effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of Government. The MMS has evaluated the costs of this rule, and has determined that it will impose no additional administrative costs.

2. This rule will not create inconsistencies with other agencies' actions.

3. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

4. This rule will raise novel legal or policy issues.

3. Regulatory Flexibility Act

The Department of the Interior certifies this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The rule applies primarily to large, integrated producers who transport their natural gas production through their own pipelines or pipelines owned by major natural gas transmission providers.

Your comments are important. The Small Business and Agricultural Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions in this rule, call 1–800–734–3247. You may comment to the Small Business Administration without fear of retaliation. Disciplinary action for retaliation by an MMS employee may include suspension or termination from employment with the Department of the Interior.

4. Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

1. Does not have an annual effect on the economy of $100 million or more. See the above Analysis titled ''Summary of Costs and Royalty Impacts.''

2. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions.

3. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

5. Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

1. This rule will not significantly or uniquely affect small governments. Therefore, a Small Government Agency Plan is not required.

2. This rule will not produce a Federal mandate of $100 million or greater in any year; *i.e.*, it is not a significant regulatory action under the Unfunded Mandates Reform Act. The analysis prepared for Executive Order 12866 will meet the requirements of the Unfunded Mandates Reform Act. See the above Analysis titled ''Summary of Costs and Royalty Impacts.''

6. Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings), Executive Order 12630

In accordance with Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required.

7. Federalism, Executive Order 13132

In accordance with Executive Order 13132, this rule does not have federalism implications. A federalism assessment is not required. It will not substantially and directly affect the relationship between the Federal and state governments. The management of Federal leases is the responsibility of the Secretary of the Interior. Royalties collected from Federal leases are shared with state governments on a percentage basis as prescribed by law. This rule will not alter any lease management or royalty sharing provisions. It will determine the value of production for royalty computation purposes only. This rule will not impose costs on states or localities.

8. Civil Justice Reform, Executive Order 12988

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule will not unduly burden the judicial system and does not meet the requirements of sections 3(a) and 3(b)(2) of the Order.

9. Paperwork Reduction Act of 1995

This rulemaking does not contain new information collection requirements or significantly change existing information collection requirements; therefore, a submission to OMB is not required. The information collection requirements referenced in this rule are currently approved by OMB under OMB control number 1010–0140 (OMB approval expires October 31, 2006). The total hour burden currently approved under 1010–0140 is 125,856 hours. Under the proposed rule (69 FR 43944, July 23, 2004), we asked for comments regarding any information collection burdens that would arise under a new provision at Section 206.157(b)(5) that would allow lessees an exception to calculate a transportation allowance based on the volume-weighted average of the rates paid by the third parties under arm's-length transportation contracts. We did not receive any comments regarding information collection burdens on that specific provision.

10. National Environmental Policy Act (NEPA)

This rule deals with financial matters and has no direct effect on MMS decisions on environmental activities. Pursuant to 516 DM 2.3A (2), Section 1.10 of 516 DM 2, Appendix 1 excludes from documentation in an environmental assessment or impact statement ''policies, directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature; or the environmental effects of which are too broad, speculative or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or case-by-case.'' Section 1.3 of the same appendix clarifies that royalties and audits are considered to be routine financial transactions that are subject to categorical exclusion from the NEPA process.

11. Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR at 22951) and 512 DM 2, we have evaluated potential effects on Federally recognized Indian tribes. This rule does not apply to Indian leases. However, it is theoretically possible that this rule might have a very small impact on the competitiveness of Indian leases in situations where an Indian lease is not in an index zone and the lessee is affiliated with the pipeline that transports the Indian lease production. It is only in those situations that the lessee would have to calculate actual transportation costs using different provisions than prescribed for Federal leases in this final rule. The MMS anticipates that such situations will be extremely rare.

12. Effects on the Nation's Energy Supply, Executive Order 13211

In accordance with Executive Order 13211, this regulation does not have a significant adverse effect on the nation's energy supply, distribution, or use. The changes better reflect the way industry accounts internally for its gas valuation and provides a number of technical clarifications. None of these changes should impact significantly the way industry does business, and accordingly should not affect their approach to energy development or marketing. Nor does the rule otherwise impact energy supply, distribution, or use.

13. Consultation and Coordination With Indian Tribal Governments, Executive Order 13175

In accordance with Executive Order 13175, this rule does not have tribal implications that impose substantial direct compliance costs on Indian tribal governments.

14. Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? A ''section'' appears in bold type and is preceded by the symbol ''§'' and a numbered heading; for example, § 206.157 Determination of Transportation Allowances. (5) What is the purpose of this part? (6) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the rule? (7) What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240.

List of Subjects in 30 CFR Part 206

Continental shelf, Government contracts, Mineral royalties, Natural gas, Petroleum, Public lands—mineral resources.

Dated: February 2, 2005.

Rebecca W. Watson,

Assistant Secretary for Land and Minerals Management.

■ For the reasons set forth in the preamble, part 206 of title 30 of the Code of Federal Regulations is amended as follows:

PART 206—PRODUCT VALUATION

■ 1. The authority citation for part 206 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.;* 25 U.S.C. 396, 396a *et seq.,* 2101 *et seq.;* 30 U.S.C. 181 *et seq.,* 351 *et seq.,* 1001 *et seq.,* 1701 *et seq.;* 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.,* 1331 *et seq.,* and 1801 *et seq.*

■ 2. In § 206.150, paragraph (b) is revised to read as follows:

§ 206.150 Purpose and scope.

* * * * *

(b) If the regulations in this subpart are inconsistent with:

(1) A Federal statute;

(2) A settlement agreement between the United States and a lessee resulting from administrative or judicial litigation;

(3) A written agreement between the lessee and the MMS Director

establishing a method to determine the value of production from any lease that MMS expects at least would approximate the value established under this subpart; or

(4) An express provision of an oil and gas lease subject to this subpart; then the statute, settlement agreement, written agreement, or lease provision will govern to the extent of the inconsistency.

* * * * *

■ 3. In § 206.151, a new definition of ''affiliate'' is added in alphabetical order and the definitions of ''allowance'' and ''arm's-length'' contract are revised to read as follows:

§ 206.151 Definitions.

* * * * *

Affiliate means a person who controls, is controlled by, or is under common control with another person. For purposes of this subpart:

(1) Ownership or common ownership of more than 50 percent of the voting securities, or instruments of ownership, or other forms of ownership, of another person constitutes control. Ownership of less than 10 percent constitutes a presumption of noncontrol that MMS may rebut.

(2) If there is ownership or common ownership of 10 through 50 percent of the voting securities or instruments of ownership, or other forms of ownership, of another person, MMS will consider the following factors in determining whether there is control under the circumstances of a particular case:

(i) The extent to which there are common officers or directors;

(ii) With respect to the voting securities, or instruments of ownership, or other forms of ownership: The percentage of ownership or common ownership, the relative percentage of ownership or common ownership compared to the percentage(s) of ownership by other persons, whether a person is the greatest single owner, or whether there is an opposing voting bloc of greater ownership;

(iii) Operation of a lease, plant, pipeline, or other facility;

(iv) The extent of participation by other owners in operations and day-to-day management of a lease, plant, pipeline, or other facility; and

(v) Other evidence of power to exercise control over or common control with another person.

(3) Regardless of any percentage of ownership or common ownership, relatives, either by blood or marriage, are affiliates.

Allowance means a deduction in determining value for royalty purposes. *Processing allowance* means an allowance for the reasonable, actual costs of processing gas determined under this subpart. *Transportation allowance* means an allowance for the reasonable, actual costs of moving unprocessed gas, residue gas, or gas plant products to a point of sale or delivery off the lease, unit area, or communitized area, or away from a processing plant. The transportation allowance does not include gathering costs.

* * * * *

Arm's-length contract means a contract or agreement between independent persons who are not affiliates and who have opposing economic interests regarding that contract. To be considered arm's length for any production month, a contract must satisfy this definition for that month, as well as when the contract was executed.

* * * * *

■ 4. Section 206.157 is amended as follows:
■ A. Paragraph (b)(2)(v) is revised;
■ B. Paragraph (b)(5) is revised;
■ C. Paragraph (c) is revised;
■ D. Paragraphs (f) introductory text, (f)(1), and (f)(7) are revised and paragraph (f)(10) is added; and
■ E. The word ''and'' at the end of paragraph (g)(4) is removed, paragraph (g)(5) is revised, and new paragraphs (g)(6) through (g)(8) are added.
■ The additions and revisions read as follows:

§ 206.157 Determination of transportation allowances.

* * * * *

(b) * * *

(2) * * *

(v) The rate of return must be 1.3 times the industrial rate associated with Standard & Poor's BBB rating. The BBB rate must be the monthly average rate as published in Standard & Poor's Bond Guide for the first month for which the allowance is applicable. The rate must be redetermined at the beginning of each subsequent calendar year.

* * * * *

(5) You may apply for an exception from the requirement to compute actual costs under paragraphs (b)(1) through (b)(4) of this section.

(i) The MMS will grant the exception if:

(A) The transportation system has a tariff filed with the Federal Energy Regulatory Commission (FERC) or a state regulatory agency, that FERC or the state regulatory agency has permitted to become effective, and

(B) Third parties are paying prices, including discounted prices, under the tariff to transport gas on the system under arm's-length transportation contracts.

(ii) If MMS approves the exception, you must calculate your transportation allowance for each production month based on the lesser of the volume-weighted average of the rates paid by the third parties under arm's-length transportation contracts during that production month or the non-arm's-length payment by the lessee to the pipeline.

(iii) If during any production month there are no prices paid under the tariff by third parties to transport gas on the system under arm's-length transportation contracts, you may use the volume-weighted average of the rates paid by third parties under arm's-length transportation contracts in the most recent preceding production month in which the tariff remains in effect and third parties paid such rates, for up to five successive production months. You must use the non-arm's-length payment by the lessee to the pipeline if it is less than the volume-weighted average of the rates paid by third parties under arm's-length contracts.

(c) *Reporting requirements.* (1) *Arm's-length contracts.* (i) You must use a separate entry on Form MMS–2014 to notify MMS of a transportation allowance.

(ii) The MMS may require you to submit arm's-length transportation contracts, production agreements, operating agreements, and related documents. Recordkeeping requirements are found at part 207 of this chapter.

(iii) You may not use a transportation allowance that was in effect before March 1, 1988. You must use the provisions of this subpart to determine your transportation allowance.

(2) *Non-arm's-length or no contract.* (i) You must use a separate entry on Form MMS–2014 to notify MMS of a transportation allowance.

(ii) For new transportation facilities or arrangements, base your initial deduction on estimates of allowable gas transportation costs for the applicable period. Use the most recently available operations data for the transportation system or, if such data are not available, use estimates based on data for similar transportation systems. Paragraph (e) of this section will apply when you amend your report based on your actual costs.

(iii) The MMS may require you to submit all data used to calculate the allowance deduction. Recordkeeping requirements are found at part 207 of this chapter.

(iv) If you are authorized under paragraph (b)(5) of this section to use an exception to the requirement to calculate your actual transportation costs, you must follow the reporting requirements of paragraph (c)(1) of this section.

(v) You may not use a transportation allowance that was in effect before March 1, 1988. You must use the provisions of this subpart to determine your transportation allowance.

* * * * *

(f) *Allowable costs in determining transportation allowances.* You may include, but are not limited to (subject to the requirements of paragraph (g) of this section), the following costs in determining the arm's-length transportation allowance under paragraph (a) of this section or the non-arm's-length transportation allowance under paragraph (b) of this section. You may not use any cost as a deduction that duplicates all or part of any other cost that you use under this paragraph.

(1) *Firm demand charges paid to pipelines.* You may deduct firm demand charges or capacity reservation fees paid to a pipeline, including charges or fees for unused firm capacity that you have not sold before you report your allowance. If you receive a payment from any party for release or sale of firm capacity after reporting a transportation allowance that included the cost of that unused firm capacity, or if you receive a payment or credit from the pipeline for penalty refunds, rate case refunds, or other reasons, you must reduce the firm demand charge claimed on the Form MMS–2014 by the amount of that payment. You must modify the Form MMS–2014 by the amount received or credited for the affected reporting period, and pay any resulting royalty and late payment interest due;

* * * * *

(7) *Payments (either volumetric or in value) for actual or theoretical losses.* However, theoretical losses are not deductible in non-arm's-length transportation arrangements unless the transportation allowance is based on arm's-length transportation rates charged under a FERC- or state regulatory-approved tariff under paragraph (b)(5) of this section. If you receive volumes or credit for line gain, you must reduce your transportation allowance accordingly and pay any resulting royalties and late payment interest due;

* * * * *

(10) *Costs of surety.* You may deduct the costs of securing a letter of credit, or other surety, that the pipeline requires you as a shipper to maintain under an arm's-length transportation contract.

(g) * * *

(5) *Fees paid to brokers.* This includes fees paid to parties who arrange marketing or transportation, if such fees are separately identified from aggregator/marketer fees;

(6) *Fees paid to scheduling service providers.* This includes fees paid to parties who provide scheduling services, if such fees are separately identified from aggregator/marketer fees;

(7) *Internal costs.* This includes salaries and related costs, rent/space costs, office equipment costs, legal fees, and other costs to schedule, nominate, and account for sale or movement of production; and

(8) *Other nonallowable costs.* Any cost you incur for services you are required to provide at no cost to the lessor.

* * * * *

[FR Doc. 05–4515 Filed 3–9–05; 8:45 am]

BILLING CODE 4310–MR–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R01–OAR–2005–ME–0001; A–1–FRL–7881–2]

Approval and Promulgation of Air Quality Implementation Plans; Maine; NO_X Control Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maine. This revision establishes requirements to reduce emissions of nitrogen oxides from large stationary sources. The intended effect of this action is to approve these requirements into the Maine SIP. EPA is taking this action in accordance with the Clean Air Act (CAA).

DATES: This direct final rule will be effective May 9, 2005, unless EPA receives adverse comments by April 11, 2005. If EPA receives adverse comments, the Agency will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: When submitting your comments, include the Regional Material in EDocket (RME) ID Number R01–OAR–2005–ME–0001 by one of the following methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. Agency Web site: *http://docket.epa.gov/rmepub/* Regional Material in EDocket (RME), EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

3. E-mail: *conroy.dave@epa.gov.*

4. Fax: (617) 918–0661.

5. Mail: ''RME ID Number R01–OAR–2005–ME–0001'' David Conroy, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (mail code CAQ), Boston, MA 02114–2023.

6. Hand Delivery or Courier. Deliver your comments to: David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAQ), Boston, MA 02114–2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Regional Material in EDocket (RME) ID Number R01–OAR–2005–ME–0001. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://docket.epa.gov/rmepub/,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through Regional Material in EDocket (RME), regulations.gov, or e-mail. The EPA RME Web site and the Federal regulations.gov Web site are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your

name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters or any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the Regional Material in EDocket (RME) index at *http://docket.epa.gov/rmepub/*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Christine Sansevero, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114–2023, (617) 918–1699, *sansevero.christine@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

In addition to the publicly available docket materials available for inspection electronically in Regional Material in EDocket, and the hard copy available at the Regional Office, which are identified in the **ADDRESSES** section above, copies of the state submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the Bureau of Air Quality Control, Department of Environmental Protection, First Floor of the Tyson Building, Augusta Mental Health Institute Complex, Augusta, ME 04333–0017.

II. Rulemaking Information

This section is organized as follows:

A. What Action is EPA Taking?

EPA is approving Maine's Chapter 145, ''NO_X Control Program'' and incorporating this regulation into the Maine SIP.

B. What are the Requirements of Maine's New Regulation?

Chapter 145 sets year-round NO_X emission limits for all electric generating facilities and industrial sources with a heat input of greater than 250 million British Thermal Units (BTU) per hour located in York, Cumberland, Sagadahoc, Androscoggin, Kennebec, Lincoln, and Knox counties. The rule establishes control requirements for electric generating units (EGUs) and industrial boilers, through both ''interim'' and ''final'' emission limits (in pounds per million BTU) as indicated in Table 1 below. The limits are to be met on a 90-day rolling average basis. The rule includes the appropriate testing and recordkeeping requirements to ensure compliance with the specified emission limits. The rule also includes provisions for averaging emissions between units in certain circumstances as well as appropriate monitoring requirements.

TABLE 1.—INTERIM AND FINAL EMISSION LIMITS FOR LARGE STATIONARY SOURCES

Affected source	Interim limits June 15, 2003 thru December 30, 2004	Final limits December 30, 2004
Fossil fuel fired EGU with heat input less than 750 mmBTU/hr	0.27 lbs/mmBTU	0.22 lbs/mmBTU.
Fossil fuel fired EGU with heat input greater than or equal to 750 mmBTU/hr	0.19 lbs/mmBTU	0.15 lbs/mmBTU.
Fossil fuel fired heat exchangers, primary boilers and resource recovery units with heat input greater than 250 mmBTU/hr.	0.20 lbs/mmBTU	0.20 lbs/mmBTU.

While an affected source must comply with the interim limits, the regulation provides for alternative emission limitations for sources that cannot meet the final emission limits using NO_X control technology approved by the Maine Department of Environmental Protection Commissioner or Maine Board of Environmental Protection under Chapter 145. If an affected source fails to meet the final emission limitation after installing the approved NO_X control technology, they can apply to the Board to establish an alternative emission limitation based on the actual performance of the NO_X control technology. Affected sources must apply to the Board for an alternative emission limit by January 1, 2005. The Board will process any application for alternative emission limits as a license amendment.

The authority to establish alternative emission limits is the functional equivalent of a director's discretion provision. Director's discretion provisions are not acceptable for inclusion in SIPs if the state is relying on the provision to satisfy a Clean Air Act requirement, or to receive credit under its SIP for enforceable emission reductions. Chapter 145, however, is an additional control measure undertaken by Maine that goes beyond what is minimally required by the Clean Air Act. This rule is not meant to implement a Reasonably Available Control Technology requirement and Maine is not covered by the NO_X SIP call. Therefore, EPA is approving this rule as a SIP strengthening measure despite the provision allowing the Board to set alternative limits. Fortunately, the rule limits the time frame for requesting an alternative limit; after January 1, 2005 no source may apply for such a limit. As a result, we now know the universe of emissions units that may be receiving an alternative limit. Imposing a limit on the time frame to request an alternate limit has the effect of eliminating the operation of the director's discretion provision after passage of this deadline.

Maine DEP has notified EPA that, on December 28, 2004, one such affected facility, FPL Energy, submitted an application for alternative emission

limits for units 3 and 4 of their Wyman station in Yarmouth, Maine. Once the Board has made a final determination of the alternative limits for units 3 and 4 at Wyman Station, EPA and the public will know what emissions limits are in effect under the rule for these units. Moreover, Maine DEP has committed to submit any alternative emission limits to EPA as a single-source SIP revision [1]. Once the state establishes those limits in an operating license and submits them to EPA for approval as a revision to the SIP, EPA will be able to assign SIP credit for the final emission limits for these units, and there will be no further opportunity for the state to change the limits under the rule unless it is done as a revision to the SIP.

C. Why is EPA Approving Maine's Regulation?

EPA has evaluated Maine's Chapter 145 and has determined that this regulation strengthens the existing SIP requirements for large stationary sources. The specific requirements of the regulation and EPA's evaluation of these requirements are detailed in a memorandum dated January 24, 2005, entitled ''Technical Support Document—Maine—NO_X Control Program Regulation'' (TSD). The TSD and Maine's Chapter 145 are available in the docket supporting this action.

D. What is the Process for EPA To Approve This SIP Revision?

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This action will be effective May 9, 2005, without further notice unless the EPA receives adverse comments by April 11, 2005.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on May 9, 2005, and no further action will be taken on the proposed rule.

III. Final Action

EPA is approving Maine's Chapter 145, ''NO_X Control Program'' and incorporating this regulation into the Maine SIP.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 9, 2005. Interested parties should comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by

[1] See response to comment number 108 on page 95 of DEP's Supplemental Basis Statement for Chapter 145.

reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: February 18, 2005.

Robert W. Varney,

Regional Administrator, EPA New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart U—Maine

■ 2. Section 52.1020 is amended by adding paragraph (c)(56) to read as follows:

§ 52.1020 Identification of plan.

* * * * *

(c) * * *

(56) Revisions to the State Implementation Plan submitted by the Maine Department of Environmental Protection on February 12, 2004.

(i) Incorporation by reference.

(A) Chapter 145 of the Maine Department of Environmental Protection Regulations, ''NO_X Control Program,'' effective in the State of Maine on July 22, 2001.

(ii) Additional materials.

(A) Nonregulatory portions of the submittal.

■ 3. In § 52.1031, Table 52.1031 is amended by adding a new state citation, 145, in numerical order to read as follows:

§ 52.1031 EPA-approved Maine regulations.

* * * * *

TABLE 52.1031.—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date adopted by State	Date approved by EPA	Federal Register citation	52.1020
*	*	*	*	*	*
145	NO_X Control Program	6/21/01	4/10/05	[Insert *FR* citation from published date] ...	(c)(56).

Note.—1. The regulations are effective statewide unless stated otherwise in comments section.

[FR Doc. 05–4709 Filed 3–9–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[AZ 135–0085; FRL–7879–3]

Approval and Promulgation of State Implementation Plans; Designation of Areas for Air Quality Planning Purposes; State of Arizona; Maricopa County Area; Technical Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: In this action, EPA is amending the regulations that identify area designations within Arizona. The purpose of this action is to correct this section to clarify the boundary description of the Phoenix Planning Area designated as nonattainment for the National Ambient Air Quality Standards (NAAQS) for particulate matter 10 microns or smaller in diameter (PM–10).

DATES: *Effective Date:* This action is effective on April 11, 2005.

ADDRESSES: Copies of documents relevant to this action are available for public inspection during normal business hours at the Air Planning Office of the Air Division, Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901. Due to increased security, we suggest that you call at least 24 hours prior to visiting the Regional Office so that we can make arrangements to have someone meet you.

FOR FURTHER INFORMATION CONTACT: Wienke Tax, Air Planning Office (Air-2), U.S. Environmental Protection Agency, Region IX, (520) 622–1622 or e-mail to *tax.wienke@epa.gov.*

SUPPLEMENTARY INFORMATION: On July 1, 1987, EPA revised the NAAQS for particulate matter, replacing the standard applicable to Total Suspended Particulates (TSP) with a standard that would apply to PM–10, and establishing new annual and 24-hour standards for PM–10 (52 FR 24634). To assure attainment of the new NAAQS, EPA required that states identify areas as nonattainment/attainment/unclassifiable for PM–10, and submit their designations to EPA, in accordance with the requirements of the Clean Air Act (CAA) section 107(d)(1)(A).

On May 15, 1991, Arizona Governor Fife Symington submitted PM–10 nonattainment area designations for Arizona. Included in these initial designations was the following boundary definition recommendation for the Maricopa County area, also referred to as the Phoenix Planning Area:

''Within the Boundaries of Maricopa County:
T6N, R1–3W, R1–7E
T5N, R1–3W, R1–7E
T4N, R1–3W, R1–7E
T3N, R1–3W, R1–7E
T2N, R1–3W, R1–7E
T1N, R1–3W, R1–7E
T1S, R1–3W, R1–7E
T2S, R1–3W, R1–7E and T1N, R7–8E in Pinal County''

We codified Arizona's initial PM–10 designations on March 3, 1978 (43 FR 8694). The description of the Phoenix Planning Area in the CFR is listed under ''Maricopa and Pinal Counties'' as:

''The rectangle determined by, and including—
T6N, R3W
T6N, R7E
T2S, R3W
T2S, R7E,
T1N, R8E''

40 CFR 81.303. Thus, while the area described in our federal regulations is identical to the area described by the State's initial designation, we did not identify which of the townships and ranges are part of Maricopa County and which are part of Pinal County.

On September 13, 2004, ADEQ sent EPA Region 9 a letter requesting that we revise the Phoenix Planning Area boundary description in 40 CFR 81.303 to conform to the State's initial 1991 designation with one additional change. Where the State's 1991 designation identified ''T1N, R7–8E in Pinal County'', the State's 2004 letter requests that the Pinal County portion of this designation be corrected to read ''T1N, R8E in Pinal County'', because Township 1 North, Range 7 East is in Maricopa County and not in Pinal County.

The State's September 13, 2004 request is reasonable and will correct errors made by EPA in codifying the

boundaries of the Phoenix Planning Area designated nonattainment for PM–10. Therefore, EPA is taking action today to amend the Arizona PM–10 table in 40 CFR 81.303 to match the description in the State's September 13, 2004 letter.

Specifically, the Phoenix Planning Area will be defined as:

''Maricopa County:
Phoenix Planning Area * * *
T6N, R1–3W, R1–7E
T5N, R1–3W, R1–7E
T4N, R1–3W, R1–7E
T3N, R1–3W, R1–7E
T2N, R1–3W, R1–7E
T1N, R1–3W, R1–7E
T1S, R1–3W, R1–7E
T2S, R1–3W, R1–7E
Pinal County:
Phoenix Planning Area * * *
T1N, R8E''

This change will not alter the actual boundaries of the Phoenix Planning Area; the change merely clarifies their description.

We are taking this action under our authority in CAA section 110(k)(6). Section 110(k)(6) provides, ''Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revisions (or part thereof), area designation, redesignation, classification, or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate* * *.'' Today's action corrects errors in the description of the Phoenix Planning Area designated nonattainment for PM–10. This action is not a redesignation under CAA section 107(d)(3) and does not change the actual boundaries of the nonattainment area. We are finalizing this action without notice and comment because this action is a correction to a designation promulgated under section 107(d)(1) and, under CAA section 107(d)(2)(B), such designations are not subject to the notice and comment requirements of the Administrative Procedures Act. Pursuant to section 110(k)(6), we are to make the correction today in the same manner as our original designation under section 107(d)(1).

Summary of Final Action

In this action, EPA is amending 40 CFR part 81, subpart C, to correct errors in the Arizona PM–10 table for the Phoenix Planning Area. Specifically, this action amends 40 CFR 81.303, describing the boundary of the Phoenix Planning Area for PM–10. This action aligns the applicable sections of 40 CFR part 81 with the State's request submitted on September 13, 2004 to correct the boundary.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). The Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 9, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* CAA section 307(b)(2))

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental regulations, Particulate matter.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: February 16, 2005.

Wayne Nastri,

Regional Administrator, Region IX.

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart D—Arizona

■ 2. Section 52.120 is amended by adding paragraph (c)(120) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(120) The following plan was submitted on September 13, 2004, by the Governor's designee.

(i) Incorporation by reference.

(A) Arizona Department of Environmental Quality.

(*1*) 40 CFR 81.303, Attainment Status Designations—Arizona, Request for Technical Correction of Phoenix Planning Area (Maricopa County) PM–10 Serious Nonattainment Area Boundaries, dated September 13, 2004.

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart C—[AMENDED]

■ 2. In § 81.303, the table entitled ''Arizona—PM–10'' is amended by removing the entry for ''Maricopa and Pinal Counties'' and adding an entry for ''Maricopa County'' and an entry for ''Pinal County'' to read as follows:

§ 81.303 Arizona.

* * * * *

ARIZONA—PM–10

Designated area	Designation		Classification	
	Date	Type	Date	Type
* * * * * * *				
Maricopa County:				
Phoenix planning area ..... T6N, R1–3W, R1–7E; T5N, R1–3W, R1–7E; T4N, R1–3W, R1–7E; T3N, R1–3W, R1–7E; T2N, R1–3W, R1–7E; T1N, R1–3W, R1–7E; T1S, R1–3W, R1–7E; T2S, R1–3W, R1–7E.	11/15/90	Nonattainment	6/10/96	Serious.
Pinal County:				
Phoenix planning area. T1N, R8E	11/15/90	Nonattainment	6/10/96	Serious.
* * * * * * *				

* * * * *

[FR Doc. 05–4710 Filed 3–9–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126332–5039–02; I.D. 030405A]

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish by Vessels Using Non-Pelagic Trawl Gear in the Red King Crab Savings Subarea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for groundfish with non-pelagic trawl gear in the red king crab savings subarea (RKCSS) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2005 red king crab prohibited species catch (PSC) limit that is specified for the RKCSS of the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 8, 2005, through 2400 hrs, A.l.t., December 31, 2005.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2005 red king crab PSC limit specified for the RKCSS is 42,495 animals as established by the 2005 and 2006 final harvest specifications for groundfish in the BSAI (70 FR 8979, February 24, 2005).

In accordance with § 679.21(e)(7)(ii)(B), the Administrator, Alaska Region, NMFS, has determined that the amount of the 2005 red king crab PSC limit specified for the RKCSS has been caught. Consequently, NMFS is closing the RKCSS to directed fishing for groundfish with non-pelagic trawl gear.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA

(AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the RKCSS to directed fishing for groundfish with non-pelagic trawl gear.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 4, 2005.

Alan D. Risenhoover

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 05–4742 Filed 3–7–05; 2:32 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 46
Thursday, March 10, 2005

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 03–069–2]

RIN 0579–AB85

Nursery Stock Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking and request for comments; extension of comment period.

SUMMARY: We are extending the comment period for our advance notice of proposed rulemaking that solicited public comment on whether and how we should amend the regulations that govern the importation of nursery stock, also known as plants for planting. This action will allow interested persons additional time to prepare and submit comments.

DATES: We will consider all comments that we receive on or before April 11, 2005.

ADDRESSES: You may submit comments by any of the following methods:

- EDOCKET: Go to *http://www.epa.gov/feddocket* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once you have entered EDOCKET, click on the ''View Open APHIS Dockets'' link to locate this document.
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 03–069–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–069–1.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov* and follow the instructions for locating this docket and submitting comments.

Reading Room: You may read any comments that we receive on Docket No. 03–069–1 in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: You may view APHIS documents published in the **Federal Register** and related information on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Dr. Arnold T. Tschanz, Senior Staff Officer, Regulatory Coordination, PPQ, APHIS, 4700 River Road Unit 141, Riverdale, MD 20737–1236; (301) 734–5306.

SUPPLEMENTARY INFORMATION: On December 10, 2004, we published in the **Federal Register** (69 FR 71736–71744, Docket No. 03–069–1) an advance notice of proposed rulemaking that solicited public comment on whether and how we should amend the regulations that govern the importation of nursery stock, also known as plants for planting.

Comments on the advance notice of proposed rulemaking were required to be received on or before March 10, 2005. We are extending the comment period on Docket No. 03–069–1 for an additional 30 days. This action will allow interested persons additional time to prepare and submit comments.

Authority: 7 U.S.C. 450 and 7701–7772; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 4th day of March 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–4705 Filed 3–9–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–20055; Airspace Docket No. 05–AGL–01]

Proposed Modification of Class E Airspace; Muskegon, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to modify Class E airspace at Muskegon, MI. Standard Instrument Approach Procedures have been developed for Grand Haven Memorial Airpark, Grand Haven, MI. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing these approach procedures. This action would increase the area of existing controlled airspace for Grand Haven Memorial Airpark.

DATES: Comments must be received on or before May 9, 2005.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket Number FAA–2005–20055/Airspace Docket No. 05–AGL–01, at the beginning of your comments. You may also submit comments on the internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at FAA Terminal Operations, Central Service Area Office, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: J. Mark Reeves, FAA Terminal Operations, Central Service Office, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7477.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this document must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2005–20055/Airspace Docket No. 05–AGL–01.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Muskegon, MI, for Grand Haven Memorial Airpark. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9M dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MI E5 Muskegon, MI [Revised]

Muskegon County Airport, MI
(Lat. 43°10′10″ N., long., 86°14′18″ W.)
Grand Haven Memorial Airpark, MI
(Lat. 43°02′03″ N., long., 86°11′53″ W.)
Muskegon VORTAC
(Lat. 43°10′09″ N., long., 86°02′22″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of the Muskegon County Airport, and within 2.6 miles each side of the ILS localizer southeast course extending from the 6.8-mile radius to 10.8 miles southeast of the airport, and within 2.4 miles each side of the localizer northwest course extending from the 6.8-mile radius to 12.1 miles northwest of the airport, and within 2.8 miles each side of the Muskegon VORTAC 266° radial extending from the 6.8-mile radius to 12.7 miles west of the airport, and within 1.3 miles each side of the Muskegon VORTAC 271° radial extending from the VORTAC to the 6.8-mile radius of the airport and within a 6.4-mile radius of the Grand Haven Memorial Airpark.

* * * * *

Issued in Des Plaines, Illinois, on February 18, 2005.

Nancy B. Kort,

Area Director, Central Terminal Operations.

[FR Doc. 05–4655 Filed 3–9–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 864

[Docket No. 2005N–0017]

Medical Devices; Hematology and Pathology Devices; Reclassification from Class III to Class II of Automated Blood Cell Separator Device Operating by Centrifugal Separation Principle

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to reclassify from class III to class II (special controls) the automated blood

cell separator device operating on a centrifugal separation principle and intended for the routine collection of blood and blood components. This proposed rule would also modify the special control for the device with the same intended use but operating on a filtration separation principle. The reclassification is being proposed on FDA's own initiative under procedures set forth in FDA regulations and based on information provided to FDA. This action is being taken under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments), the Safe Medical Devices Act of 1990 (the SMDA), and the Food and Drug Administration Modernization Act of 1997 (FDAMA). The agency proposes this reclassification because special controls, in addition to general controls, are capable of providing reasonable assurance of the safety and effectiveness of the device. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice of availability of a draft guidance document entitled ''Class II Special Controls Guidance Document: Automated Blood Cell Separator Device Operating by Centrifugal or Filtration Separation Principle,'' which will serve as the special control if this proposal becomes final.

DATES: Submit written or electronic comments by June 8, 2005. See section XVI of this document for the proposed effective date of a final rule based on this document.

ADDRESSES: You may submit comments, identified by Docket No. 2005N–0017, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.
- E-mail: *fdadockets@oc.fda.gov*. Include Docket No. 2005N–0017 in the subject line of your e-mail message.
- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions]: Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the agency name and Docket No. or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the **Comments** heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/ohrms/dockets/default.htm* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Kathleen E. Swisher, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, suite 200N, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background (Regulatory Authorities)

The act (21 U.S.C. 301 *et seq.*), as amended by the 1976 amendments (Public Law 94–295), the SMDA (Public Law 101–629), and FDAMA (Public Law 105–115), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under the 1976 amendments, class II devices were defined as those devices for which there is insufficient information to show that general controls themselves will assure safety and effectiveness, but for which there is sufficient information to establish ''performance standards'' to provide such assurance. The SMDA revised the definition of class II devices to include those devices for which there is insufficient information to show that general controls themselves will assure safety and effectiveness, but for which there is sufficient information to establish special controls to provide such assurance. Special controls may include performance standards, postmarket surveillance, patient registries, development and dissemination of guidelines, recommendations, and any other appropriate actions the agency deems necessary (section 513(a)(1)(B) of the act). The SMDA also directs FDA to revise the classification of such preamendments class III devices into class I or class II or require the device to remain in class III; and directs FDA to issue a schedule for section 515(b) of the act (21 U.S.C. 360e(b)) rulemaking within 12 months of publication of a regulation retaining a device in class III. However, the SMDA does not prevent FDA from proceeding immediately to section 515(b) rulemaking on specific devices, in the interest of public health, independent of the 515(i) process.

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), generally referred to as preamendments devices, are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution before May 28, 1976, generally referred to as postamendments devices, are classified automatically by statute (section 513(f) of the act) into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval, unless and until: (1) The device is reclassified into class I or II; (2) FDA issues an order classifying the device into class I or II in accordance with section 513(f)(2) of the act, as amended by FDAMA; or (3) FDA issues an order finding the device to be substantially equivalent, under section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures in section 510(k) of the act and 21 CFR part 807 of the regulations.

A preamendments device that has been classified into class III may be marketed, by means of premarket notification procedures, without submission of a premarket approval application (PMA) until FDA issues a final regulation under section 515(b) of the act requiring premarket approval.

Reclassification of classified preamendments devices is governed by section 513(e) of the act. Section 513(e) of the act provides that FDA may, by rulemaking, reclassify a device (in a proceeding that parallels the initial classification proceeding) based upon ''new information.'' The reclassification can be initiated by FDA or by the

petition of an interested person. The term ''new information,'' as used in section 513(e) of the act, includes information developed as a result of a reevaluation of the data before the agency when the device was originally classified, as well as information not presented, not available, or not developed at that time. (See, e.g., *Holland Rantos* v. *United States Department of Health, Education, and Welfare*, 587 F.2d 1173, 1174 n.1 (D.C. Cir. 1978); *Upjohn* v. *Finch*, 422 F.2d 944 (6th Cir. 1970); *Bell* v. *Goddard*, 366 F.2d 177 (7th Cir. 1966).)

Reevaluation of the data previously before the agency is an appropriate basis for subsequent regulatory action where the reevaluation is made in light of newly available regulatory authority (see *Bell* v. *Goddard*, supra, 366 F.2d at 181; *Ethicon, Inc.* v. *FDA*, 762 F.Supp. 382, 389–91 (D.D.C. 1991)), or in light of changes in ''medical science.'' (See *Upjohn* v. *Finch*, supra, 422 F.2d at 951.) Regardless of whether data before the agency are past or new data, the ''new information'' upon which reclassification under section 513(e) of the act is based must consist of ''valid scientific evidence,'' as defined in section 513(a)(3) of the act and 21 CFR 860.7(c)(2). (See, e.g., *General Medical Co.* v. *FDA*, 770 F.2d 214 (D.C. Cir. 1985); *Contact Lens Assoc.* v. *FDA*, 766 F.2d 592 (D.C. Cir.), cert. denied, 474 U.S. 1062 (1985)). FDA relies upon ''valid scientific evidence'' in the classification process to determine the level of regulation for devices. For the purpose of reclassification, the valid scientific evidence upon which the agency relies must be publicly available. Publicly available information excludes trade secret and/or confidential commercial information, e.g., the contents of a pending PMA. (See section 520(c) of the act (21 U.S.C. 360j(c).)

II. Regulatory History of the Device

The automated blood cell separator device operating by centrifugal separation principle intended for the routine collection of blood and blood components is a preamendments device classified into class III. The 1976 amendments did not immediately subject preamendments devices classified in class III to the premarket approval process. The act requires FDA to publish 515(b) regulations directing the submission of premarket approval applications for preamendments class III devices. The 515(b) process involves the publication of two **Federal Register** notices, the proposed rule and the final rule. The 515(b) proposed rule announces FDA's intention to call for PMAs, lists the issues to be addressed in PMA submissions, states a deadline for the receipt of comments, and affords an opportunity to request reclassification. The final rule addresses any comments received, repeats the issues to be addressed in PMA submissions, and sets a deadline for the submission of premarket approval applications or investigational device exemptions of not more than 90 days after the date of publication.

In the **Federal Register** of September 11, 1979 (44 FR 53050), FDA issued a proposed rule to classify into class III the automated blood cell separator device intended for routine collection of blood and blood components. The preamble to the proposed rule to classify the device included the recommendation of an FDA advisory committee, The Hematology Device Classification Panel, regarding the classification of the device.

In the **Federal Register** of September 12, 1980 (45 FR 60643), FDA issued a final rule (§ 864.9245 (21 CFR 864.9245)) classifying into class III the automated blood cell separator operating either on a centrifugal or filtration separation principle intended for routine collection of blood and blood components.

A. Centrifugal Separation Principle

In the **Federal Register** of February 19, 1988 (53 FR 5108),[1] FDA published a proposed rule to require the filing of a PMA or a notice of completion of a product development protocol (PDP) for the automated blood cell separator device based on a centrifugal separation principle and intended for the routine collection of blood and blood components. The February 1988 proposed rule summarized the risks and benefits associated with the use of the automated blood cell separator. FDA also announced an opportunity for interested persons to request a change in the classification of the device based on new information.

In the **Federal Register** of May 16, 1988 (53 FR 17227), FDA extended the comment period of the proposed rule from 60 days to 90 days in response to a letter from a medical trade association requesting additional time to submit comments. In response to the February 1988 proposed rule, the agency received 17 letters of comment. New information in the form of scientific evidence was submitted with several of the comments to FDA on the automated blood cell separator operating on the centrifugal separation principle. The majority of the letters of comment indicated there is sufficient evidence to provide reasonable assurance of the safety and effectiveness of the automated blood cell separator operating on the centrifugal separation principle, and supported reclassifying the device into class II when intended only for routine collection of blood and blood components. Many of the comment letters provided scientific information and references in support of the reclassification. FDA has evaluated the information submitted and decided that there is valid scientific evidence supporting a change in classification of the centrifugal-based automated blood cell separator with the intended use of routine collection of blood and blood components from class III, requiring premarket approval, to class II, requiring special controls.

Consistent with the act and regulation, FDA referred the proposed reclassification to a panel for its recommendation on the requested change in classification. FDA announced in the **Federal Register** of April 18, 1989 (54 FR 15558), that the agency would consult with the Blood Products Advisory Committee (BPAC) in an open meeting on May 11, 1989 (Ref. 1), regarding the reclassification of the automated blood cell separator operating on a centrifugal separation principle. BPAC acts in the capacity of a device classification panel for such matters as new information regarding a device and its classification. FDA requested that BPAC consider the new information and provide its recommendation as to whether BPAC agreed that the new information was substantial and supported reclassification. The recommendation of BPAC is further discussed in section IV of this document.

In accordance with section 513(e) of the act and § 860.130(b)(1) (21 CFR 860.130(b)(1)), based on new information with respect to the device, FDA, on its own initiative, is proposing to reclassify the centrifugal-based automated blood cell separator device from class III to class II (special controls) when the intended use of the device is for the routine collection of blood and blood components. For all other uses, including therapeutic apheresis, the device remains in its current classification as class III. All therapeutic apheresis (blood cell separator) devices are regulated by FDA's Center for Devices and Radiological Health and are not part of § 864.9245.

[1] In the **Federal Register** of April 22, 2003 (68 FR 19766), FDA issued a withdrawal of certain proposed rules and other proposed actions; notice of intent to withdraw *Hematology and Pathology Devices; Premarket Approval of the Automated Blood Cell Separator Intended for Routine Collection of Blood and Blood Components.*

B. Filtration Separation Principle

The automated blood cell separator device operating on a filtration separation principle and intended for the routine collection of blood and blood components is a postamendments device originally classified into class III under section 513(f)(1) of the act. On June 17, 1996, the Baxter Healthcare Corp. submitted to FDA a petition requesting reclassification from class III to class II of its AUTOPHERESIS–C SYSTEM device. The petition contained information in the form of scientific evidence to provide reasonable assurance of the safety and effectiveness of the filtration-based AUTOPHERESIS–C SYSTEM device. Consistent with section 513(f)(3) of the act and 21 CFR 860.134, FDA referred the petition to the BPAC medical devices panel for its recommendation on the requested change in classification. At a public meeting held on September 27, 1996, BPAC unanimously recommended that the AUTOPHERESIS–C SYSTEM and subsequent membrane-based blood cell separators substantially equivalent to this device, intended for routine collection of blood and blood components, be reclassified from class III to class II. The panel believed that class II with the special controls of a periodic report filed annually for a minimum of 3 years with emphasis on adverse reactions would provide reasonable assurance of the safety and effectiveness of the device.

FDA published a notice of BPAC's recommendation in the **Federal Register** of May 29, 2001 (66 FR 29149). In this notice, FDA issued its tentative findings on BPAC's recommendation and requested from the public comments on BPAC's recommendation. The comment period closed August 13, 2001. After receiving no comments on BPAC's recommendation for reclassification or our tentative findings on BPAC's recommendation, FDA approved the reclassification petition by order in the form of a letter to the petitioner.

In the **Federal Register** of February 28, 2003 (68 FR 9530), FDA published a final rule announcing the decision to reclassify from class III to class II the filtration-based automated blood cell separator device intended for routine collection of blood and blood components (the February 2003 final rule). In addition to general controls of the act, the February 2003 final rule also provided for special controls applicable to the filtration-based devices in order to provide reasonable assurance of the safety and effectiveness of the device.

In this rule, we are proposing to change the special control listed in the February 2003 final rule for the filtration-based device. We propose the special control to be a draft guidance entitled ''Class II Special Controls Guidance Document: Automated Blood Cell Separator Device Operating by Centrifugal or Filtration Separation Principle.'' This draft guidance, if finalized, will provide the special controls for both filtration- and centrifugal-based automated blood cell separator devices intended for the routine collection of blood and blood components.

III. Device Description

Current § 864.9245 provides a brief description of the automated blood cell separator device operating on either a centrifugal separation principle or a filtration separation principle. The current section describes the automated blood cell separator as a device that automatically withdraws whole blood from a donor, separates the blood into components (red blood cells, white blood cells, plasma, and platelets), retains one or more of the components, and returns the remainder of the blood to the donor. The components obtained are transfused or used for further manufacturing to prepare blood products for administration. The separation bowls of centrifugal blood cell separators may be reusable or disposable.

The current section classifies the centrifugal-based automated blood cell separator into class III (premarket approval). This proposed rule reclassification from class III to class II (special controls) applies to the automated blood cell separator device that operates by centrifugal separation principle and is intended for the routine collection of blood and blood components for transfusion or further manufacturing use. The proposed rule removes in the identification of the automated blood cell separator the words that were in parentheses—red blood cells, white blood cells, plasma, and platelets.

IV. Recommendation of the Panel

At a public meeting held on May 11, 1989, the BPAC panel considered the new information presented in the letters of comment and unanimously recommended that the centrifugal-based automated blood cell separator be reclassified from class III (premarket approval) to class II (performance standards; now included in special controls). The panel believed that class II with performance standards (now included in special controls) would provide reasonable assurance of the safety and effectiveness of the automated blood cell separator and that there is sufficient information publicly available to establish a performance standard (special control) to assure safety and effectiveness of the device.

We believe another device classification panel recommendation is not necessary since, prior to the SMDA, a panel recommended classification into class II. If a panel recommended that a device be reclassified from class III into class II under the 1976 definition of class II, which included only performance standards as a class II control, then the panel's recommendation for class II status would not change if special controls are required that would include performance standards, among other controls. Under the SMDA, FDA may establish special controls, including performance standards, postmarket surveillance, patient registries, guidelines, and other appropriate actions it believes necessary to provide reasonable assurance of the safety and effectiveness of the device.

V. Summary of Reasons for Recommendation (Reclassification)

The panel believes that the centrifugal-based automated blood cell separator device should be reclassified into class II because performance standards (special controls), in addition to general controls, provide reasonable assurance of the safety and effectiveness of the device, and there is sufficient information to establish special controls to provide such assurance.

VI. Risks to Health

In the February 1988 proposed rule, FDA outlined its proposed findings regarding potential risks associated with the automated blood cell separator intended for routine collection of blood and blood components. FDA's proposed findings showed the following: A major risk to health of donors is that the process of removing blood, handling the blood outside the body, and returning the blood to the donor's circulatory system could injure the cellular components of the blood and activate the body's complement system (a series of enzymatic proteins capable, when activated, of destroying intact cells). Another potential donor reaction is fever, due to a breakdown of granulocytes (leukocytes containing granules) during the pump cycle of the automated blood cell separator.

Also, if the automated blood cell separator fails to perform satisfactorily, the donor may have one or more of the following adverse reactions: (1) Shock resulting from blood loss; (2) toxic reaction to high levels of anticoagulants,

such as citrate, that the automated blood cell separator adds to the blood as it is collected and before the blood is returned to the donor; (3) stress reaction due to the removal or loss of blood; (4) thrombosis due to activation of clotting factors in the blood by surfaces within the automated blood cell separator; or (5) sepsis and fever due to bacterial contamination of the blood returned to the donor.

Lastly, an unexpected or an undetected leak in the blood handling system of the device presents risks of infections to donors, patients, and operators of the device. The device presents a risk of electrical shock or injury to operators and donors if the device has an electrical malfunction. If the automated blood cell separator fails to perform satisfactorily, the blood or blood components collected from a donor may not be suitable for use because of cellular damage to blood or blood components during the collection process. One form of cellular damage is red blood cell hemolysis (destruction of the cell membrane accompanied by the release of hemoglobin).

Public comments received in response to the proposed rule indicated that the occurrence of these risks was very low, referred to ample evidence showing the safety and effectiveness of the automated blood cell separator, and supported reclassification of the device into class II.

Presently, FDA has identified the following risks associated with apheresis blood donation and processing: (1) The potential loss of blood due to leaks; (2) thrombosis due to activation of factors by foreign surfaces; (3) toxic reaction to citrate anticoagulant; (4) damage to red blood cells, activation of complement, and denaturation of proteins; (5) potential for sepsis and fever due to bacterial contamination of the donor's blood returned to the donor; (6) infectious disease risk to the donor or to the operator due to leaks; (7) electrical shock hazard; (8) donor stress reaction due to removal or loss of blood; (9) air embolism; (10) hemolysis; and (11) reservoir rupture.

In addition to the potential risks of the centrifugal-based automated blood cell separator, there is sufficient information about the benefits of the device. Extensive experience with the device indicates that the centrifugal-based automated blood cell separator is safe and effective for the intended use of routine collection of blood and blood components.

VII. Summary of Data Upon Which the Recommendation (Reclassification) is Based

In response to the February 1988 rule proposing to place the device in class III, we received 17 letters of comment from manufacturers and the blood banking community (Ref. 1 at 103). These commenters included such organizations as the Health Industry Manufacturers Association and the American Association of Blood Banks (Ref. 1 at 104). The comments received indicated the risk to benefit ratio is low. In proposing this reclassification, we considered these industry comments and the history for over 30 years of safe use of the centrifugal-based automated blood cell separator device.

VIII. FDA's Tentative Findings

FDA believes that the special controls discussed in section IX of this document are capable of providing reasonable assurance of the safety and effectiveness of the automated blood cell separator device operating on a centrifugal separation principle with regard to the identified risks to health of this device. Based on FDA's evaluation of the additional information received in the letters of comment, as well as the 1989 BPAC panel recommendation and the safety record of the device in actual use, the agency has reconsidered the February 1988 proposed rule, and believes that the centrifugal-based automated blood cell separator device should be classified into class II (special controls). FDA, through an agency-wide action of proposed rule withdrawals (April 22, 2003, 68 FR 19766), announced its intention to withdraw the February 1988 proposed rule. Now, FDA is proposing to amend the device regulations by reclassifying from class III to class II (special controls guidance) the centrifugal-based automated blood cell separator device intended for the routine collection of blood and blood components. FDA is also changing the special control for the automated blood cell separator device using the filtration separation principle for the routine collection of blood and blood components. The same special control guidance will apply to the filtration and centrifugal-based devices when these devices are used for the routine collection of blood and blood components.

IX. Special Controls

Based on available information and in addition to general controls, FDA believes that the FDA guidance for industry and FDA staff entitled ''Class II Special Controls Guidance Document: Automated Blood Cell Separator Device Operating by Centrifugal or Filtration Separation Principle,'' can provide reasonable assurance of the safety and effectiveness of the device. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of this draft guidance document.

For currently marketed products not approved under the PMA process, the draft guidance document recommends that the manufacturer file with FDA for three consecutive years an annual report on the anniversary date of the final rule for reclassification or on the anniversary date of 510(k) clearance. Any subsequent change to the device requiring the submission of a premarket notification in accordance with section 510(k) of the act should be included in the annual report. A manufacturer of a device that is determined to be substantially equivalent to the automated blood cell separator device operating by centrifugal or filtration separation principles intended for routine collection of blood and blood components, also would be required to comply with the same general and special controls. The firm would need to show that its device meets the recommendations of the guidance or in some other way provides equivalent assurances of safety and effectiveness.

The draft guidance document (special control) recommends that each annual report include, at a minimum, the following information:

- A summary of anticipated and unanticipated donor adverse device events that have occurred and that are not required to be reported by manufacturers under Medical Device Reporting (MDR).[2] We recommend summarizing and reporting donor adverse device events such as those required under § 606.160(b)(1)(iii) (21 CFR 606.160(b)(1)(iii))[3,4] to be recorded and maintained by the facility[5] using

[2] 21 CFR 803.1(a) — ''* * * device user facilities, importers, and manufacturers, as defined in § 803.3, must report deaths and serious injuries to which a device has or may have caused or contributed * * * .''

[3] Section 606.160(b) — ''Records shall be maintained that include, but are not limited to, the following when applicable: * * * (1)(iii) Donor adverse reaction complaints and reports, including results of all investigations and followup.''

[4] In a separate proposed rulemaking (Safety Reporting Requirements for Human Drug and Biological Products; Proposed Rule (68 FR 12405, March 14, 2003)), FDA has proposed amending 21 CFR 606.170 to require the investigation and recording by blood establishments of any complaint of a serious adverse reaction related to the collection or transfusion of blood or blood components.

[5] ''Facility'' means any area used for the collection, processing, compatibility testing, storage or distribution of blood and blood components (21

Continued

the device for the routine collection of blood and blood components. Under 21 CFR 803.50(b)(2), manufacturers are responsible for conducting an investigation of each event and evaluating the cause of the event. Therefore, this information should be available to the manufacturer to summarize and provide to FDA in the annual report. We emphasize that safety information submitted to FDA is not to be considered an admission of causation or liability (October 27, 1994, 59 FR 54046 at 54051).

- Any subsequent change to the device requiring the submission of a premarket notification in accordance with section 510(k) of the act.[6]
- Any subsequent change to the preamendments class III device requiring a 30-day notice in accordance with 21 CFR 814.39(f).

The reporting of adverse device events summarized in an annual report will alert FDA to trends or clusters of events that might be a safety issue otherwise unreported under the MDR regulation. Adverse reactions contributed to or caused by an apheresis blood donation device, such as operator infection or injury; equipment failures, including software, hardware, and disposable item failures; thrombosis; sepsis; and shock resulting from blood loss, may be reportable under MDR. The annual report need not include MDR reports.

X. References

The following reference has been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Blood Products Advisory Committee Meeting Transcript, May 11, 1989.

XI. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this proposed reclassification action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

XII. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency tentatively concludes that the proposed rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement has not been prepared.

XIII. Analysis of Impacts

FDA has examined the impacts of this proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

Under the Regulatory Flexibility Act, if a rule has a significant economic impact on a substantial number of small entities, an agency must consider alternatives that would minimize the economic impact of the rule on small entities. Reclassification of this device from class III to class II will relieve manufacturers of the cost of complying with the premarket approval requirements of section 515 of the act, and may permit small potential competitors to enter the marketplace by lowering their costs. Although the proposed rule special control guidance document recommends that manufacturers of these devices file with FDA an annual report for three consecutive years, this is less burdensome than the current premarket approval requirements including the submission of periodic reports (21 CFR 814.84).

The agency, therefore, certifies that this proposed rule, if finalized, will not have a significant economic impact on a substantial number of small entities, and no further analysis is required under the Regulatory Flexibility Act. In addition, the Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for this proposed rule because the proposed rule will not impose costs of $100 million or more on State, local, and tribal governments in the aggregate, or the private sector, in any one year (adjusted annually for inflation).

XIV. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) is not required.

XV. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

XVI. Proposed Effective Date

The agency is proposing that any final rule that may issue based upon this proposed fule become effective 30 days after its date of publication in the **Federal Register**.

List of Subjects in 21 CFR Part 864

Blood, Medical devices, Packaging and containers.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 864 be amended as follows:

PART 864—HEMATOLOGY AND PATHOLOGY DEVICES

■ 1. The authority citation for 21 CFR part 864 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Section 864.9245 is revised to read as follows:

CFR 606.3(h)). Also, applicable is ''device user facility'' under § 803.3(f), meaning ''a hospital, ambulatory surgical facility, nursing home, outpatient diagnostic facility, or outpatient treatment facility * * *.'' (Note: The donor becomes a patient when he or she experiences and is treated for an adverse event contributed to or caused by the medical device.)

[6] For assistance see the guidance document entitled ''Deciding When to Submit a 510(k) for a Change to an Existing Device,'' January 1997, at *http://www.fda.gov/cdrh*.

§ 864.9245 Automated blood cell separator.

(a) *Identification.* An automated blood cell separator is a device that uses a centrifugal or filtration separation principle to automatically withdraw whole blood from a donor, separate the whole blood into blood components, collect one or more of the blood components, and return to the donor the remainder of the whole blood and blood components. The automated blood cell separator device is intended for routine collection of blood and blood components for transfusion or further manufacturing use.

(b) *Classification.* Class II (special controls). The special control for this device is a guidance for industry and FDA staff entitled ''Class II Special Controls Guidance Document: Automated Blood Cell Separator Device Operating by Centrifugal or Filtration Separation Principle.''

Dated: March 1, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

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NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 542

RIN 3141–AA27

Minimum Internal Control Standards

AGENCY: National Indian Gaming Commission.

ACTION: Proposed rule.

SUMMARY: In response to the inherent risks of gaming enterprises and the resulting need for effective internal controls in Tribal gaming operations, the National Indian Gaming Commission (Commission or NIGC) first developed Minimum Internal Control Standards (MICS) for Indian gaming in 1999, and then later revised them in 2002. The Commission recognized from the outset that periodic technical adjustments and revisions would be necessary in order to keep the MICS effective in protecting Tribal gaming assets and the interests of Tribal stakeholders and the gaming public. To that end, the following proposed rule revisions contain certain proposed corrections and revisions to the Commission's existing MICS, which are necessary to clarify, improve, and update other existing MICS provisions. The purpose of these proposed MICS revisions is to address apparent shortcomings in the MICS and various changes in Tribal gaming technology and methods.

DATES: Submit comments on or before April 25, 2005. After consideration of all received comments, the Commission will make whatever changes to the proposed revisions that it deems appropriate and then promulgate and publish the final revisions to the Commission's MICS Rule, 25 CFR part 542.

ADDRESSES: Mail comments to ''Comments to Second Set of Proposed MICS Rule Revisions, National Indian Gaming Commission, 1441 L Street, NW., Washington, DC 20005, Attn: Acting General Counsel, Penny J. Coleman.'' Comments may be transmitted by facsimile to (202) 632–7066.

FOR FURTHER INFORMATION CONTACT: Vice-Chairman Nelson Westrin, (202) 632–7003 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On January 5, 1999, the Commission first published its Minimum Internal Control Standards (MICS) as a Final Rule. As gaming Tribes and the Commission gained practical experience applying the MICS, it became apparent that some of the standards required clarification or modification to operate as the Commission had intended and to accommodate changes and advances that had occurred over the years in Tribal gaming technology and methods.

Consequently, the Commission, working with an Advisory Committee composed of Commission and Tribal representatives published the new final revised MICS rule on June 27, 2002. As the result of the practical experience of the Commission and Tribes working with the newly revised MICS, it has once again become apparent that additional corrections, clarifications, and modifications are needed to ensure that the MICS continue to operate as the Commission intended. To identify which of the current MICS need correction, clarification or modification, the Commission initially solicited input and guidance from NIGC employees, who have extensive gaming regulatory expertise and experience and work closely with Tribal gaming regulators in monitoring the implementation, operation, and effect of the MICS in Tribal gaming operations. The resulting input from NIGC staff convinced the Commission that the MICS require continuing review and prompt revision on an ongoing basis to keep them effective and up-to-date. To address this need, the Commission decided to establish a Standing MICS Advisory Committee to assist it in both identifying and developing necessary MICS revisions on an ongoing basis.

In recognition of its government-to-government relationship with Tribes and related commitment to meaningful Tribal consultation, the Commission requested gaming Tribes, in January 2004, for nominations of Tribal representatives to serve on its Standing MICS Advisory Committee. From the twenty-seven (27) Tribal nominations that it received, the Commission selected nine (9) Tribal representatives in March 2004 to serve on the Committee. The Commission's Tribal Committee member selections were based on several factors, including the regulatory experience and background of the individuals nominated, the size(s) of their affiliated Tribal gaming operation(s), the types of games played at their affiliated Tribal gaming operation(s), and the areas of the country in which their affiliated Tribal gaming operation(s) are located. The selection process was very difficult, because numerous highly qualified Tribal representatives were nominated to serve on this important Committee. As expected, the benefit of including Tribal representatives on the Committee, who work daily with the MICS, has proved to be invaluable.

Tribal representatives selected to serve on the Commission's Standing MICS Advisory Committee are: Tracy Burris, Gaming Commissioner, Chickasaw Nation Gaming Commission, Chickasaw Nation of Oklahoma; Jack Crawford, Chairman, Umatilla Gaming Commission, Confederated Tribes of the Umatilla Indian Reservation; Patrick Darden, Executive Director, Chitimacha Gaming Commission, Chitimacha Indian Tribe of Louisiana; Mark N. Fox, Compliance Director, Four Bears Casino, Three Affiliated Tribes of the Fort Berthold Reservation; Sherrilyn Kie, Senior Internal Auditor, Pueblo of Laguna Gaming Authority, Pueblo of Laguna; Patrick Lambert, Executive Director, Eastern Band of Cherokee Gaming Commission, Eastern Band of Cherokee Indians; John Meskill, Director, Mohegan Tribal Gaming Commission, Mohegan Indian Tribe; Jerome Schultze, Executive Director, Morongo Gaming Agency, Morongo Band of Mission Indians; and Lorna Skenandore, Assistant Gaming Manager, Support Services, Oneida Bingo and Casino, formerly Gaming Compliance Manager, Oneida Gaming Commission, Oneida Tribe of Indians of Wisconsin. The Advisory Committee also includes the following Commission representatives: Philip N. Hogen, Chairman; Nelson Westrin, Vice-

Chairman; Cloyce V. Choney, Associate Commissioner; Joe H. Smith, Acting Director of Audits; Ken Billingsley, Region III Director; Nicole Peveler, Field Auditor; Ron Ray, Field Investigator; and Sandra Ashton, Staff Attorney, Office of General Counsel.

In the past, the MICS were comprehensively revised on a large wholesale basis. Such large-scale revisions proved to be difficult for Tribes to implement in a timely manner and unnecessarily disruptive to Tribal gaming operations. The purpose of the Commission's Standing Committee is to conduct a continuing review of the operation and effectiveness of the existing MICS, in order to promptly identify and develop needed revisions of the MICS, on a manageable incremental basis, as they become necessary to revise and keep the MICS practical and effective. By making more manageable incremental changes to the MICS on an ongoing basis, the Commission hopes to be more prompt in developing needed revisions, while, at the same time, avoiding larger-scale MICS revisions which take longer to implement and can be unnecessarily disruptive to Tribal gaming operations.

In accordance with this approach, the Commission has developed the following second set of proposed MICS rule revisions, with the assistance of its Standing MICS Advisory Committee. In doing so, the Commission is carrying out its statutory mandate under the Indian Gaming Regulatory Act, 25 U.S.C. 2706(b)(10), to promulgate necessary and appropriate regulations to implement the provisions of the Act. In particular, the following proposed MICS rule revisions are intended to address Congress' purpose and concern stated in Section 2702(2) of the Act, that the Act ''provide a statutory basis for the regulation of gaming by an Indian tribe adequate to shield it from organized crime and other corrupting influences, to ensure the Indian tribe is the primary beneficiary of the gaming operation, and to ensure the gaming is conducted fairly and honestly by both the operator and the players.''

The Commission, with the Committee's assistance, identified three specific objectives for the following proposed MICS rule revisions: (1) To ensure that the MICS are reasonably comparable to the internal control standards of established gaming jurisdictions; (2) to ensure that the interests of the Tribal stakeholders are adequately safeguarded; and (3) to ensure that the interests of the gaming public are adequately protected.

The Advisory Committee met on October 21, 2004, and January 25, 2005, to discuss the revisions set forth in the following second set of proposed MICS rule revisions. The input received from the Committee Members has been invaluable to the Commission in its development of the following proposed MICS rule revisions. In accordance with the Commission's established Government-to-Government Tribal Consultation Policy, the Commission provided a preliminary working draft of all of the proposed MICS rule revisions contained herein to gaming Tribes on November 24, 2004, for a thirty (30)-day informal review and comment period, before formulation of this proposed rule. In response to its requests for comments, the Commission received thirty two (32) comments from Commission and Tribal Advisory Committee members, individual Tribes, and other interested parties regarding the proposed revisions. A summary of these comments is presented below in the discussion of each proposed revision to which they relate.

General Comments to Proposed MICS Revisions

For reasons stated above in this preamble, the National Indian Gaming Commission proposes to revise the following specific sections of its MICS rule, 25 CFR part 542. The following discussion includes the Commission's responses to general comments concerning the MICS and is followed by a discussion regarding each of the specifically proposed revisions, along with previously submitted informal comments to the proposed revisions and the Commission's responses to those comments. As noted above, prior commenters include Commission and Tribal Advisory Committee members, gaming Tribes, and others.

Comments Questioning NIGC Authority To Promulgate MICS for Class III Gaming

Many of the previous informal comments to the preliminary working draft of the proposed MICS revisions pertained to the Commission's authority to promulgate rules governing the conduct of Class III gaming. Positions were expressed asserting that Congress intended the NIGC's Class III gaming regulatory authority to be limited exclusively to the approval of tribal gaming ordinances and management contracts. Similar comments were received concerning the first proposed MICS back in 1999. The Commission, at that time, determined in its publication of the original MICS in 1999 that it possessed the statutory authority to promulgate Class III MICS.

As stated in the preamble to those MICS: ''The Commission believes that it does have the authority to promulgate this final rule. * * * [T]he Commission's promulgation of MICS is consistent with its responsibilities as the Federal regulator of Indian gaming.'' 64 FR 509 (Jan. 5, 1999).

The current Commission reaffirms that determination. The Indian Gaming Regulatory Act, which established the regulatory structure for all classes of Indian gaming, expressly provides that the Commission ''shall promulgate such regulations as it deems appropriate to implement the provisions of (the Act).'' 25 U.S.C. 2707(b)(10). Pursuant to this clearly stated statutory duty and authority under the Act, the Commission has determined that MICS are necessary and appropriate to implement and enforce the regulatory provisions of the Act governing the conduct of both Class II and Class III gaming and accomplish the purposes of the Act.

The Commission believes that the importance of internal control systems in the casino operating environment cannot be overemphasized. While this is true of any industry, it is particularly true and relevant to the revenue generation processes of a gaming enterprise, which, because of the physical and technical aspects of the games and their operation and the randomness of game outcomes, makes exacting internal controls mandatory. The internal control systems are the primary management procedures used to protect the operational integrity of gambling games, account for and protect gaming assets and revenues, and assure the reliability of the financial statements for Class II and III gaming operations. Consequently, internal control systems are a vitally important part of properly regulated gaming. Internal control systems govern the gaming enterprise's governing board, management, and other personnel who are responsible for providing reasonable assurance regarding the achievement of the enterprise's objectives, which typically include operational integrity, effectiveness and efficiency, reliable financial statement reporting, and compliance with applicable laws and regulations.

The Commission believes that strict regulations, such as the MICS, are not only appropriate but necessary for it to fulfill its responsibilities under the IGRA to establish necessary baseline, or minimum, Federal standards for all Tribal gaming operations on Indian lands. 25 U.S.C. 2702(3). Although the Commission recognizes that many Tribes had sophisticated internal

control standards in place prior to the Commission's original promulgation of its MICS, the Commission also continues to strongly believe that promulgation and revision of these standards is necessary and appropriate to effectively implement the provisions of the Indian Gaming Regulatory Act and, therefore, within the Commission's clearly expressed statutory power and duty under Section 2706(b)(10) of the Act.

Comments Recommending Voluntary Tribal Compliance With MICS

Comments were also received suggesting that the NIGC should re-issue the MICS as a bulletin or guideline for Tribes to use voluntarily, at their discretion, in developing and implementing their own Tribal gaming ordinances and internal control standards.

The Commission disagrees. The MICS are common in established gaming jurisdictions and, to be effective in establishing a minimum baseline for the internal operating procedures of Tribal gaming enterprises, the rule must be concise, explicit, and uniform for all Tribal gaming operations to which they apply. Furthermore, to nurture and promote public confidence in the integrity and regulation of Indian gaming and ensure its adequate regulation to protect Tribal gaming assets and the interests of Tribal stakeholders and the public, the Commission's MICS regulations must be reasonably uniform in their implementation and application and regularly monitored and enforced by Tribal regulators and the NIGC to ensure Tribal compliance.

Proposed Revisions to Section 542.3(f) CPA Testing

The Commission proposes to revise the noted regulation to clarify the type of report being requested and more accurately define the scope and function of the process deemed necessary to ensure consistency and reliability of the reports produced. The text of the proposed revision is set forth following the conclusion of this preamble in which all of the proposed revisions to the Commission's MICS rule, 25 CFR part 542, are discussed.

Since the MICS were initially adopted, the CPA Testing standard has been the subject of much concern and question due to its lack of specificity. Numerous inquiries have been received from tribal regulators, gaming operators and accounting practitioners. As a result of the issues raised, in June 2000, guidelines were issued by the Commission to aid in the interpretation of the regulation; however, questions and inconsistencies in the reports continue to exist. Therefore, the revision is being proposed to clarify or define: (1) The type of reporting required of the independent accountant; (2) Clarify that the Commission does not possess an expectation that the independent accountant render an opinion regarding the overall quality of the gaming operation's internal control systems; (3) More accurately define the scope and breath of the testing and observations to be performed by the practitioner in conjunction with the engagement; and (4) Explicitly communicate to the CPA that reliance upon the work of the internal auditor is an acceptable option, subject to satisfaction of certain conditions and the determination by the practitioner that the work product of the internal auditor is sufficient to enable reliance.

Comments were received acknowledging the need to explicitly define the regulation's expectations. Furthermore, it was stated that the proposed revision may result in a reduction in costs to many tribes and most likely an improvement in the quality of the data produced by the CPA.

As initially drafted, the proposed revision contained rather exacting criteria that the CPA should consider in determining whether to rely on the work of the internal auditor. The criteria addressed such items as education, professional certification and experience. Several commenters misinterpreted the noted conditions as establishing minimum criteria for hiring an internal auditor and practitioners noted that even though an internal auditor or internal audit department failed to satisfy the criteria the work product produced might still be of sufficient quality to warrant reliance. The Commission reconsidered the explicit criteria and deleted them. As proposed, the CPA is advised that reliance is at the discretion of the practitioner provided the internal audit department can demonstrate satisfaction of the MICS requirements contained within the internal audit sections, as applicable.

One commenter noted that the current regulation requires the CPA to test for material compliance; whereas, the proposed revision indicates that all instances of procedural noncompliance be reported, without regard to materiality. A concern was expressed whether the change represents a more stringent condition. Although the Commission appreciates the concern, we do not believe the striking of the reference to material compliance should have a significant impact on the work performed by practitioners. The term ''material'' has a financial connotation that is misplaced in a regulation possessing the intent of measuring regulatory compliance with a codified set of minimum internal control procedures. In essence, the term is simply ambiguous when utilized in the context of compliance testing. However, it is important to recognize that the ultimate beneficiary of the information is the gaming operation's management. The report produced is intended to provide compliance data to the operator that will facilitate the initiation of a proactive response to the findings. Obviously, inherent to the worthiness of a disclosed compliance exception is the need for corrective action. We do not believe the proposed regulation precludes the CPA from exercising professional judgment in determining whether an exception warrants disclosure. For example, the Commission would not consider a report to be noncompliant if, during the sampling of a large number of items, the CPA detected a minute number of compliance exceptions and determined that they represented only isolated incidents of noncompliance, which did not justify a remedial response.

Furthermore, if during testing of transactions at the beginning of an audit period items of noncompliance were detected but the CPA was able to confirm that corrective action had been effectively implemented by the end of the period, it would be entirely appropriate for the practitioner to exercise professional judgment in deciding whether there was any worthwhile benefit to disclosure.

Since initial adoption, concerns have been expressed regarding the regulation because it stipulates the benchmark for measuring compliance to the internal control standards adopted by the tribal gaming regulatory authority. Specifically, it was noted that it is not uncommon for tribal standards to be more stringent than the federal rule or require procedures not in the MICS. The appropriateness of requiring the CPA to report incidences of noncompliance on standards not representing noncompliance with the MICS was questioned. In consideration of the Commission's stated objective of creating a minimum baseline for internal control systems, we concur with the expressed concern. Therefore, in conjunction with the revision of the section, it was changed to require compliance testing against the federal rule; however, at the discretion of the tribe, the tribe may opt to engage the external accountant to audit for

compliance against the minimum standards adopted by the tribal gaming regulatory authority. If the alternative testing criteria are desired, the proposed revision requires the CPA to first confirm that the applicable tribal regulations provide a level of control that equals or exceed those set forth in Part 542.

A commenter objected to the explicit nature of the testing criteria contained within the proposed revision. The concern was specific to whether any deviation from the stipulated testing would be permissible; that the tribal gaming regulatory authority should have the latitude to require testing of greater scope and depth and that the CPA should be able to expand or contract testing based on a risk analysis.

The Commission does not concur with the concern expressed. To ensure consistency and reliability of the reports produced, it is necessary that a minimum level of testing be performed by practitioners. Although the proposed revision states that the NIGC MICS compliance checklist or other comparable testing procedures be performed, the Commission does not believe the proposed regulation should be so narrowly interpreted as to preclude any deviation. For example, a tribal gaming regulatory authority might require the CPA to conduct more in depth testing of gaming machines located in a high stakes area or might permit a lesser level of testing for table games possessing exceedingly low bet limits. Such determinations would simply be based on an analysis of the risk posed by specific games. Furthermore, the CPA has the latitude to exercise professional judgment in determining sample size and scope. For example, a firm possessing several years of experience with a client that has had an exemplary record of addressing compliance exceptions might result in the external accountant's contraction of testing. Whereas, if the converse situation existed in which management had been non-responsive to exceptions, the external accountant might deem it prudent to expand testing since the control environment would likely be at a higher risk of compromise.

A commenter questioned whether it would be permissible for a CPA to perform the required observations subsequent to the fiscal year end. Although the Commission questions the wisdom of performing observations at a time outside the period subject to review, we do not believe the proposed regulation explicitly forbids it. However, recognizing that the results of such observation would have diminished value, expanded compensating document testing relevant to the audit period would seem a logical action.

A commenter recommended that the Commission should codify in the rule that the CPA testing period be the fiscal year of the gaming enterprise. The Commission disagrees with the need to stipulate in the rule that the period subject to audit must be the fiscal year. Inherent to the filing requirement that the report be submitted within 120 days of the gaming operation's fiscal year end, it is the presumption that the period subject to review will be the business year. The Commission is unaware of this concern being of any significance within the industry.

A commenter suggested that the proposed revisions require the CPA submit a copy of internal audit reports when there is reliance. Furthermore, the commenter represented that in accordance with the referenced Agreed-Upon-Procedures pronouncement the practitioner is precluded from extracting data from the internal audit reports. Other commenters have not agreed with this position when the CPA has performed such testing as necessary to gain sufficient assurance in the quality of the internal audit work to rely thereon. Although the Commission has received internal audit reports from CPA firms, we do not concur that such submissions should be required. Our position is founded upon the fact that the filings frequently include findings unrelated to the MICS, *i.e.* incidents of noncompliance with internal policies and procedures such a personnel or recommendations to management regarding productivity and efficiency.

A commenter recommended that the proposed revisions require the inclusion of management responses to the compliance audit findings. Although occasionally submissions do include comments or anticipated remedial actions plans from management, the Commission believes that including such a requirement in the rule would unduly hinder satisfaction of the filing deadline of 120 days past fiscal year end. It is important to note that the primary beneficiary of the independent report is management, who should require, as a component of the enterprise's overall operational objectives, compliance with all applicable laws and regulations. Although the Commission utilizes the data submitted to evaluate the internal control systems and their compliance with the federal rule, the CPA testing report is only one of several sources of information drawn upon to perform the analysis. It is the position of the Commission that the lack of management responses will not significantly impede that evaluation.

A commenter suggested that the CPA, in testing of internal audit work performed, be allowed to accept digital copies or facsimile of original documents. The Commission concurs with the suggestion. It is not uncommon for such reproductions to carry the same weight as the original and the proposed regulation is not intended to preclude the procedure.

A commenter suggested that the count observations be required to be initiated at the beginning of the drop/count process and that such a procedure would facilitate observation of the key control and surveillance notification functions.

The Commission disagrees with the suggestion. The objective of entering the count room after commencement of the count is to detect irregularities and internal control deficiencies, which would not be as likely if count personnel were aware that observations were going to be performed. Furthermore, with regards to the required key controls and notification of surveillance, documentation of such events is mandated by the MICS, which enables a subsequent audit.

A commenter raised a concern that the proposed revisions will supersede the authority of the tribe to determine the scope and depth of the testing to be performed in accordance with the Agreed-Upon-Procedures pronouncement and, in effect, transfer accountability of the CPA to the Commission.

The Commission disagrees with the commenter's interpretation of the proposed revision. Contained therein is the representation that an independent Certified Public Accountant shall be engage to perform the compliance testing. The statement is purposeful in its lack of specificity regarding the entity within the tribe that would assume responsibility for executing the engagement letter. It is the position of the Commission that such a decision should be left to the discretion of the tribe. Although in practice most engagement letters are signed by an authorized management person or audit committee representative, the Commission has also noted engagements originating with the tribal gaming regulatory authority. Without regards to the entity or individual possessing the authority to engage the independent accountant, there should be no misunderstanding that the objective of the proposed revision is to establish only the minimum criteria that must be incorporated in the engagement letter. Furthermore, the CPA should be

well aware that their client is the engaging party, not the Commission.

A commenter noted that the auditing profession has established methods and procedures to guide CPA firms in documenting and conducting their reviews through the AICPA's Casino Audit and Accounting Guide and the Auditing Standards Board's Statement on Standards for Attestation Engagements, specifically SSAE#10. That these standards provide CPA firms pertinent guidance regarding the process, procedures and reporting format and requirements to be employed.

The Commission disagrees with the commenter; not because we believe the Audit and Accounting Guide for casinos conflicts with any standard contained within the MICS, but because the professional pronouncement simply lacks sufficient specificity to effectively confirm compliance with the federal rule or the tribal internal control standards. With regards to the pronouncement relevant to performance of attestation engagements, the Commission embraces the concepts contained therein and considers the proposed revision to compliment the directive. However, we do not accept the premise that the professional directive is adequate to ensure reliability and consistency in the reports; considering the report's objective of identifying incidences of noncompliance with a codified set of control procedures, which can be rather exacting.

A commenter objected to the CPA firm's personnel performing observations in the count room while the count is in progress because they would have potential access to unaccounted for funds. Although the Commission appreciates the concern expressed, it is our position that for the practitioner to effectively test the internal control systems for compliance there must be unfettered access to all applicable areas and records of the gaming operation. Of course, the Commission would consider it prudent for management or the tribal regulatory authority to initiate compensating controls to offset the risk posed by persons external to the casino being in areas in which access is restricted; however, in consideration of such controls, they should not unduly interfere with the objectives of the engagement.

Initial drafts of the proposed rule contained a requirement that the gaming operation must provide the CPA with written assurance regarding compliance by the internal auditor or internal audit department with applicable standards contained within the internal audit sections of the MICS. Comments were received questioning the need for the CPA to receive such written assurance since the external accountant would still be expected to confirm the representation. The Commission concurred with the commenter and has struck the noted requirement from the proposed rule.

Proposed Revisions to the Following Sections: 542.7(d) (Bingo) Accountability Form; 542.8(f) (Pull-Tab) Accountability Form; 542.10(f) (Keno) Checkout Standards at the End of Each Keno Shift; 542.11(e) (Pari-Mutuel Wagering) Checkout Standards; 542.13(f) (Gaming Machines) Gaming Machine Department Funds Standards; 542.14(d) (Cage) Cage and Vault Accountability Standards

Revisions to the referenced sections of the MICS are intended to clarify the respective existing regulations. Specifically, the change is to state explicitly that unverified transfers of cash or cash equivalents accountability are prohibited.

Initially, the proposed revision stated that blind drops are prohibited but several commenters noted that the term had rather diverse interpretations. It was recommended that the revision would be more precise to state, ''Unverified transfers of cash and/or cash equivalents are prohibited.'' The Commission concurred with the recommendation and revised the initial draft accordingly.

Comment was received recommending that the proposed revision also be added to the relevant standards contained within the MICS drop and count sections. The Commission disagrees with the recommendation. The standards contained within the drop and count sections are sufficiently clear that no additional clarification is needed. The standards are effective in precluding unverified transfers.

Proposed Revision to 542.14(d)(3) Cage and Vault Accountability Standards

Based on the result of compliance audits conducted by the Commission and research performed, it has been determined that the referenced standard is incorrect with respect to its placement within the MICS. The standards were intended to codify the minimum components of the cage/vault accountability. Unfortunately, included within the list of items is gaming machine hopper loads. Generally accepted gaming regulatory standards and common industry practice would dictate that the value of the hoppers be reflected in a general ledger account, not the cage/vault accountability. To correct the error, the Commission is proposing to strike the referenced control.

No comments were received relevant to the proposed revision.

Proposed Revisions to 542.17(b)(c)(d) (c) Complimentary Services or Items

In June 2002, a revision was made to the referenced section in which a stated value of $50 was replaced by a non-specified amount that was required to be merely reasonable. The threshold dictates when a comp transaction must be included in a report for review by management. The objective of the report is to facilitate supervisory oversight of the comps process for the purpose of ensuring compliance with the gaming operation's comp policy.

Unfortunately, confusion and conflict have resulted from the 2002 revision. Therefore, the Commission is proposing to revise the regulation to require that individual comp transactions equal to or exceeding $100 be included in the report, unless the tribal gaming regulatory authority determines that the threshold should be a lesser amount.

As initially drafted, the proposed revision did not acknowledge that the tribal gaming regulatory authorities had the latitude of establishing an amount less than $100. A commenter made a recommendation that the draft be revised to grant such an option. The Commission has accepted and effectuated the recommendation.

Other comments were received supporting the revision.

Proposed Revisions to the Following Sections: 542.21(f)(12) (Tier A—Drop and Count) Gaming Machine Bill Acceptor Count Standards; 542.31(f)(12) (Tier B—Drop and Count) Gaming Machine Bill Acceptor Count Standards; 542.41(f)(12) (Tier C—Drop and Count) Gaming Machine Bill Acceptor Count Standards

The referenced standards represent a duplicate control to an identical requirement contained within each of the respective section's Gaming Machine Bill Acceptor Drop Standards, refer 542.21(e)(4), 542.31(e)(5), and 542.41(e)(5). Specifically, the standard requires the bill acceptor canisters to be posted with a number corresponding to that of the machine it was extracted. The subject control pertains to a drop function, as opposed to the count process. Therefore, the Commission is proposing to delete the above subsections.

No comments were received pertaining to the proposed revision.

Proposed Revisions to 542.21(f)(4)(ii) Drop and Count for Tier A; 542.31(f)(4)(ii) Drop and Count for Tier B; 542.41(f)(4)(ii) Drop and Count for Tier C

The Commission is proposing to delete the referenced standards, which require a second count of the gaming machine bill acceptor drop by a count team member who did not perform the first count. In justification of the proposed revision, it is important to note that the Commission has attempted to rely on the advice and experience of the established gaming jurisdictions in defining its minimum internal control regulation. Such a methodology is deemed to be not only efficient but prudent. Generally, the MICS represent a rather simplistic abbreviation of commensurate controls of the established gaming jurisdictions, which has left much room for tribal gaming regulators to complement. However, consistent with such a concept is the need for the Commission to be cognizant of any standards enacted that are overreaching. In other words, before requiring a control more stringent than the established gaming jurisdictions, the Commission should have a compelling reason for its action. The proposal to delete the noted standards is founded upon the premise that they are inconsistent with the established gaming jurisdictions and are lacking in a compelling reason justifying a more stringent procedure for tribal gaming. Unlike the drop originating with table games, meter data should be available to confirm the gaming machine bill acceptor count, which sufficiently mitigates the risk of compromise associated with that process. Based on research performed, it is the belief of the Commission that the double count requirement resulted from a drafting error in June 2002, which originated from the reformatting of the drop and count sections. Therefore, it is the position of the Commission that the standards in question should be struck.

A commenter expressed the position that the second count of the currency is appropriate and should remain in the MICS. The Commission disagrees with the commenter for the reasons previously stated. However, as echoed throughout the MICS and within the preamble, the tribal gaming regulatory authorities have primary responsibility for the regulation of their respective gaming operation(s) and have the latitude of requiring controls more stringent than those of the federal rule.

One commenter suggested that the rule should be made conditional such that only when the gaming operation employs an effective on-line accounting system should the second count be foregone. The Commission disagrees, since verification of the drop to the currency in meter reading is required by the MICS, without regard to whether the meter data is collected electronically or manually.

One commenter questioned the consistency of the Commission's action to delete the subject standards with its position regarding the prohibition against unverified transfers of an individual's accountability. The Commission does not recognize an inconsistency. The count team takes possession of the drop proceeds and is responsible for those funds until they are transferred to the cage/vault (buy process). The count team executes a count of the monies and, in conjunction with the transfer of the accountability, the vault or cage supervisory performs another count to verify the amount being conveyed to their accountability. Consequently, no cash inventories are being transferred from one person to another without mutual verification and acceptance.

Proposed Addition of 542.22(g) Internal Audit Guidelines—Tier A; 542.32(g) Internal Audit Guidelines—Tier B; 542.42(g) Internal Audit Guidelines—Tier C

The Commission proposes to add the referenced regulations to the MICS, which represents a simple notification to internal auditors and internal audit departments that the Commission will provide recommended guidelines to aid in satisfaction of the testing requirements contained with the internal audit sections of the MICS. The guidelines do not represent a rule requiring adherence but an aid for internal auditors to take advantage of as they might deem appropriate.

No comments were received pertinent to the proposed revision.

Proposed Revision to 542.23(n)(3) Tier A Surveillance—Wide Area Progressive Gaming Machines; 542.33(q)(3) Tier B Surveillance—Wide Area Progressive Gaming Machines; and 542.43(r)(3) Tier C Surveillance—Wide Area Progressive Gaming Machines

Prior to June 2002, the subject regulations required certain dedicated camera coverage over wide area progressive machines with a potential payout of $3 million or more. In conjunction with the revisions of 2002, the standards were revised to require the additional camera coverage over the noted machines if the base amount was more than $1.5 million, irrespective of potential payout.

Based on the experience gained by the Commission, it has been determined that the referenced revision negated the effectiveness of the regulation, which is to require a heightened level of surveillance coverage over wide area progressive devices commensurate with the risk posed to tribal assets and operational integrity. Such risk is directly related to the size of the potential awards but is mitigated somewhat by the fact that a third party, the wide area progressive vendor, is involved in the transaction.

The proposed revision is intended to regain the effectiveness of the original regulation, consistent with the industry's regulatory standards. Specifically, the proposed threshold is being lowered to a starting base amount of $1 million or more.

One commenter concurred with the proposed revision and acknowledged the limited effectiveness of the $1.5 million base threshold. One commenter recommended that the control be modified to require surveillance to utilize a real time standard for monitoring and recording a video of the activity in question. The Commission enthusiastically supports the position expressed by the commenter, since it is our belief that this critical function should require a surveillance standard employing a sufficient clarity criterion and be observed and recorded at thirty (30) frames or images per second, as applicable. However, the MICS currently defines sufficient clarity as requiring only twenty (20) frames per second. Since we believe that the term ''real time'' is generally understood to mean at least thirty (30) frames per second, injecting it into the proposed revision would likely create an ambiguity within the MICS.

One commenter questioned whether the additional cost resulting from the expansion of the standard's applicability is justified. The Commission appreciates the commenter's concern; however, performance of a cost benefit analysis in conjunction with the evaluation of a control can be a challenging exercise. For example, measuring the economic impact of an irregularity that did not occur because it was deterred by an effective internal control system is a highly speculative endeavor. However, a truism of gaming widely accepted by industry professionals is that as the potential reward increases so does the likelihood of compromise. This characteristic of gaming is not unrelated to the proposed revision. There is much wisdom within a process that learns from the experience of our peers who are more seasoned in the regulation of

gaming. The proposed revision is founded upon this concept. Therefore, considering that the lowered threshold will only bring the applicability of the control closer to that of the established gaming jurisdictions, the Commission believes the commenter's concern does not justify reconsideration of the proposed revision.

Regulatory Matters

Regulatory Flexibility Act

The Commission certifies that the proposed revisions to the Minimum Internal Control Standards contained within this regulation will not have a significant economic impact on small entities, 5 U.S.C. 605(b). The factual basis for this certification is as follows:

Of the 330 Indian gaming operations across the country, approximately 93 of the operations have gross revenues of less than $5 million. Of these, approximately 39 operations have gross revenues of under $1 million. Since the proposed revisions will not apply to gaming operations with gross revenues under $1 million, only 39 small operations may be affected. While this is a substantial number, the Commission believes that the proposed revisions will not have a significant economic impact on these operations for several reasons. Even before implementation of the original MICS, Tribes had internal controls because they are essential to gaming operations in order to protect assets. The costs involved in implementing these controls are part of the regular business costs incurred by such an operation. The Commission believes that many Indian gaming operation internal control standards that are more stringent than those contained in these regulations. Further, these proposed rule revisions are technical and minor in nature.

Under the proposed revisions, small gaming operations grossing under $1 million are exempted from MICS compliance. Tier A facilities (those with gross revenues between $1 and $5 million) are subject to the yearly requirement that independent certified public accountant testing occur. The purpose of this testing is to measure the gaming operation's compliance with the tribe's internal control standards. The cost of compliance with this requirement for small gaming operation is estimated at between $3,000 and $5,000. The cost of this report is minimal and does not create a significant economic effect on gaming operations. What little impact exists is further offset because other regulations require yearly independent financial audits that can be conducted at the same time. For these reasons, the Commission has concluded that the proposed rule revisions will not have a significant economic impact on those small entities subject to the rule.

Small Business Regulatory Enforcement Fairness Act

These following proposed revisions do not constitute a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The revisions will not have an annual effect on the economy of $ 100 million or more. The revisions also will not cause a major increase in costs or prices for consumers, individual industries, federal, state or local government agencies or geographic regions and does not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

The Commission is an independent regulatory agency and, as such, is not subject to the Unfunded Mandates Reform Act. Even so, the Commission has determined that the proposed rule revisions do not impose an unfunded mandate on State, local, or Tribal governments, or on the private sector, of more than $ 100 million per year. Thus, this is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act, 2 U.S.C. 1501 *et seq.*

The Commission has, however, determined that the proposed rule revisions may have a unique effect on Tribal governments, as they apply exclusively to Tribal governments, whenever they undertake the ownership, operation, regulation, or licensing of gaming facilities on Indian lands, as defined by the Indian Gaming Regulatory Act. Thus, in accordance with Section 203 of the Unfunded Mandates Reform Act, the Commission undertook several actions to provide Tribal governments with adequate notice, opportunity for ''meaningful'' consultation, input, and shared information, advice, and education regarding compliance.

These actions included the formation of a Tribal Advisory Committee and the request for input from Tribal leaders. Section 204(b) of the Unfunded Mandates Reform Act exempts from the Federal Advisory Committee Act (5 U.S.C. App.) meetings with Tribal elected officials (or their designees) for the purpose of exchanging views, information, and advice concerning the implementation of intergovernmental responsibilities or administration. In selecting Committee members, consideration was placed on the applicant's experience in this area, as well as the size of the Tribe the nominee represented, geographic location of the gaming operation, and the size and type of gaming conducted. The Commission attempted to assemble a Committee that incorporates diversity and is representative of Tribal gaming interests. The Commission will meet with the Advisory Committee to discuss the public comments that are received as a result of the publication of the following proposed MICS rule revisions, and will consider all Tribal and public comments and Committee recommendations before formulating the final rule revisions. The Commission also plans to continue its policy of providing necessary technical assistance, information, and support to enable Tribes to implement and comply with the MICS as revised.

The Commission also provided the proposed revisions to Tribal leaders for comment prior to publication of this proposed rule and considered these comments in formulating the proposed rule. (69 FR 69847, December 1, 2004).

Takings

In accordance with Executive Order 12630, the Commission has determined that the following proposed MICS rule revisions do not have significant takings implications. A takings implication assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of General Counsel has determined that the following proposed MICS rule revisions do not unduly burden the judicial system and meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

The following proposed MICS rule revisions require information collection under the Paperwork Reduction Act 44 U.S.C. 3501 *et seq.*, as did the rule it revises. There is no change to the paperwork requirements created by these proposed revisions. The Commission's OMB Control Number for this regulation is 3141–0009.

National Environmental Policy Act

The Commission has determined that the following proposed MICS rule revisions do not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

List of Subjects in 25 CFR Part 542

Accounting, Auditing, Gambling, Indian-lands, Indian-tribal government, Reporting and recordkeeping requirements.

Accordingly, for all of the reasons set forth in the foregoing preamble, the National Indian Gaming Commission proposes to amend 25 CFR part 542 as follows:

PART 542—MINIMUM INTERNAL CONTROL STANDARDS

1. The authority citation for part 542 continues to read as follows:

Authority: 25 U.S.C. 2701 *et seq.*

2. Amend § 542.3 by revising paragraph (f) to read as follows:

§ 542.3 How do I comply with this part?

* * * * *

(f) *CPA testing.* (1) An independent certified public accountant (CPA) shall be engaged to perform ''Agreed-Upon Procedures'' to verify that the gaming operation is in compliance with the minimum internal control standards (MICS) set forth in this part or a tribally approved variance thereto that has received Commission concurrence. The CPA shall report each event and procedure discovered by or brought to the CPA's attention that the CPA believes does not satisfy the minimum standards or tribally approved variance that has received Commission concurrence. The ''Agreed-Upon Procedures'' may be performed in conjunction with the annual audit. The CPA shall report its findings to the Tribe, Tribal gaming regulatory authority, and management. The Tribe shall submit one copy of the report to the Commission within 120 days of the gaming operation's fiscal year end. This regulation is intended to communicate the Commission's position on the minimum agreed-upon procedures to be performed by the CPA. Throughout these regulations, the CPA's engagement and reporting are based on Statements on Standards for Attestation Engagements (SSAEs) in effect as of December 31, 2003, specifically SSAE #10 (''Revision and Recodification Agreed-Upon Procedures Engagements''). If future revisions are made to the SSAEs or new SSAEs are adopted that are applicable to this type of engagement, the CPA is to comply with any new or revised professional standards in conducting engagements pursuant to these regulations and the issuance of the agreed-upon procedures report. The CPA shall perform the ''Agreed-Upon Procedures'' in accordance with the following:

(i) As a prerequisite to the evaluation of the gaming operation's internal control systems, it is recommended that the CPA obtain and review an organization chart depicting segregation of functions and responsibilities, a description of the duties and responsibilities of each position shown on the organization chart, and an accurate, detailed narrative description of the gaming operation's procedures in effect that demonstrate compliance.

(ii) Complete the CPA NIGC MICS Compliance checklists or other comparable testing procedures. The checklists should measure compliance on a sampling basis by performing walk-throughs, observations and substantive testing. The CPA shall complete separate checklists for each gaming revenue center, cage and credit, internal audit, surveillance, information technology and complimentary services or items. All questions on each applicable checklist should be completed. Work-paper references are suggested for all ''no'' responses for the results obtained during testing (unless a note in the ''W/P Ref'' can explain the exception).

(iii) The CPA shall perform, at a minimum, the following procedures in conjunction with the completion of the checklists:

(A) At least one unannounced observation of each of the following: Gaming machine coin drop, gaming machine currency acceptor drop, table games drop, gaming machine coin count, gaming machine currency acceptor count, and table games count. The AICPA's ''Audits of Casinos'' Audit and Accounting Guide states that '''observations of operations in the casino cage and count room should not be announced in advance * * *'' For purposes of these procedures, ''unannounced'' means that no officers, directors, or employees are given advance information regarding the dates or times of such observations. The independent accountant should make arrangements with the gaming operation and Tribal gaming regulatory authority to ensure proper identification of the CPA's personnel and to provide for their prompt access to the count rooms.

(*1*) The gaming machine coin count observation would include a weigh scale test of all denominations using pre-counted coin. The count would be in process when these tests are performed, and would be conducted prior to the commencement of any other walk-through procedures. For computerized weigh scales, the test can be conducted at the conclusion of the count, but before the final totals are generated.

(*2*) The checklists should provide for drop/count observations, inclusive of hard drop/count, soft drop/count and currency acceptor drop/count. The count room would not be entered until the count is in process and the CPA would not leave the room until the monies have been counted and verified to the count sheet by the CPA and accepted into accountability. If the drop teams are unaware of the drop observations and the count observations would be unexpected, the hard count and soft count rooms may be entered simultaneously. Additionally, if the gaming machine currency acceptor count begins immediately after the table games count in the same location, by the same count team, and using the same equipment, the currency acceptor count observation can be conducted on the same day as the table games count observation, provided the CPA remains until monies are transferred to the vault/cashier.

(B) Observations of the gaming operation's employees as they perform their duties.

(C) Interviews with the gaming operation's employees who perform the relevant procedures.

(D) Compliance testing of various documents relevant to the procedures. The scope of such testing should be indicated on the checklist where applicable.

(E) For new gaming operations that have been in operation for three months or less at the end of their business year, performance of this regulation, § 542.3(f), is not required for the partial period.

(2) Alternatively, at the discretion of the tribe, the tribe may engage an independent certified public accountant (CPA) to perform the testing, observations and procedures reflected in paragraphs (f)(1)(i), (ii) and (iii) of this section utilizing the tribal internal control standards adopted by the Tribal gaming regulatory authority or tribally approved variance that has received Commission concurrence. Accordingly, the CPA will verify compliance by the gaming operation with the tribal internal control standards. Should the tribe elect this alternative, as a prerequisite, the CPA will perform the following:

(i) The CPA shall compare the tribal internal control standards to the MICS to ascertain whether the criteria set forth in the MICS or Commission approved variances are adequately addressed.

(ii) The CPA may utilize personnel of the Tribal gaming regulatory authority to cross-reference the tribal minimum internal control standards to the MICS, provided the CPA performs a review of

the Tribal gaming regulatory authority personnel's work and assumes complete responsibility for the proper completion of the work product.

(iii) The CPA shall report each procedure discovered by or brought to the CPA's attention that the CPA believes does not satisfy paragraph (f)(2)(i) of this section.

(3) *Reliance on Internal Auditors.* (i) The CPA may rely on the work of an internal auditor, to the extent allowed by the professional standards, for the performance of the recommended procedures specified in paragraphs (f)(1)(iii)(B), (C) and (D) of this section, and for the completion of the checklists as they relate to the procedures covered therein provided that the internal audit department can demonstrate to the satisfaction of the CPA that the requirements contained within § 542.22, § 542.32 or § 542.42, as applicable, have been satisfied.

(ii) Agreed-upon procedures are to be performed by the CPA to determine that the internal audit procedures performed for a past 12-month period (includes two six-month periods) encompassing a portion or all of the most recent business year has been properly completed. The CPA will apply the following Agreed-Upon Procedures to the gaming operation's written assertion:

(A) Obtain internal audit department work-papers completed for a 12-month period (two six-month periods) encompassing a portion or all of the most recent business year and determine whether the CPA NIGC MICS Compliance Checklists or other comparable testing procedures were included in the internal audit work-papers and all steps described in the checklists were initialed or signed by an internal audit representative.

(B) For the internal audit work-papers obtained in paragraph (f)(2)(ii)(A) of this section, on a sample basis, reperform the procedures included in CPA NIGC MICS Compliance Checklists or other comparable testing procedures prepared by internal audit and determine if all instances of noncompliance noted in the sample were documented as such by internal audit. The CPA NIGC MICS Compliance Checklists or other comparable testing procedures for the applicable Drop and Count procedures are not included in the sample reperformance of procedures because the CPA is required to perform the drop and count observations as required under paragraph (f)(1)(iii)(A) of this section of the Agreed-Upon Procedures. The CPA's sample should comprise a minimum of 3% of the procedures required in each CPA NIGC MICS Compliance Checklists or other comparable testing procedures for the slot and table game departments and 5% for the other departments completed by internal audit in compliance with the internal audit MICS. The reperformance of procedures is performed as follows:

(1) For inquiries, the CPA should either speak with the same individual or an individual of the same job position as the internal auditor did for the procedure indicated in their checklist.

(2) For observations, the CPA should observe the same process as the internal auditor did for the procedure as indicated in their checklist.

(3) For document testing, the CPA should look at the same original document as tested by the internal auditor for the procedure as indicated in their checklist. The CPA need only retest the minimum sample size required in the checklist.

(C) The CPA is to investigate and resolve any differences between their reperformance results and the internal audit results.

(D) Documentation is maintained for five (5) years by the CPA indicating the procedures reperformed along with the results.

(E) When performing the procedures for paragraph (f)(3)(ii)(B) of this section in subsequent years, the CPA must select a different sample so that the CPA will reperform substantially all of the procedures after several years.

(F) Any additional procedures performed at the request of the Commission, the Tribal gaming regulatory authority or management should be included in the Agreed-Upon Procedures report transmitted to the Commission.

(4) *Report Format.* (i) The NIGC has concluded that the performance of these procedures is an attestation engagement in which the CPA applies such Agreed-Upon Procedures to the gaming operation's assertion that it is in compliance with the MICS and, if applicable, refer to paragraph (f)(2) of this section, the Tribal minimum internal control standards and approved variances provide a level of control that equals or exceeds that of the MICS. Accordingly, the Statements on Standards for Attestation Engagements (SSAE's), specifically SSAE #10, issued by the Auditing Standards Board is currently applicable. SSAE #10 provides current, pertinent guidance regarding agreed-upon procedure engagements, and the sample report formats included within those standards should be used, as appropriate, in the preparation of the CPA's agreed-upon procedures report. If future revisions are made to this standard or new SSAEs are adopted that are applicable to this type of engagement, the CPA is to comply with any revised professional standards in issuing their agreed upon procedures report. The Commission will provide an Example Report and Letter Formats upon request that may be used and contain all of the information discussed below:

(A) The report must describe all instances of procedural noncompliance (regardless of materiality) with the MICS or approved variations, and all instances where the Tribal gaming regulatory authority's regulations do not comply with the MICS. When describing the agreed-upon procedures performed, the CPA should also indicate whether procedures performed by other individuals were utilized to substitute for the procedures required to be performed by the CPA. For each instance of noncompliance noted in the CPA's agreed-upon procedures report, the following information must be included:

(*1*) The citation of the applicable MICS for which the instance of noncompliance was noted.

(*2*) A narrative description of the noncompliance, including the number of exceptions and sample size tested.

(5) *Report Submission Requirements.* (i) The CPA shall prepare a report of the findings for the Tribe and management. The Tribe shall submit two (2) copies of the report to the Commission no later than 120 days after the gaming operation's business year. This report should be provided in addition to any other reports required to be submitted to the Commission.

(ii) The CPA should maintain the work-papers supporting the report for a minimum of five years. Digital storage is acceptable. The Commission may request access to these work-papers, through the tribe.

(6) CPA NIGC MICS Compliance Checklists. In connection with the CPA testing pursuant to this section and as referenced therein, the Commission will provide CPA MICS Compliance Checklists upon request.

* * * * *

3. Amend § 542.7 by revising paragraph (d)(2) to read as follows:

§ 542.7 What are the minimum internal control standards for bingo?

* * * * *

(d) * * *

(2) All funds used to operate the bingo department shall be counted independently by at least two persons and reconciled to the recorded amounts at the end of each shift or session.

Unverified transfers of cash and/or cash equivalents are prohibited.

* * * * *

4. Amend § 542.8 by revising paragraph (f)(2) to read as follows:

§ 542.8 What are the minimum internal control standards for pull tabs?

* * * * *

(f) * * *

(2) All funds used to operate the pull tab game shall be counted independently by at least two persons and reconciled to the recorded amounts at the end of each shift or session. Unverified transfers of cash and/or cash equivalents are prohibited.

* * * * *

5. Amend § 542.10 by revising paragraph (f)(1)(ii) to read as follows:

§ 542.10 What are the minimum internal control standards for keno?

* * * * *

(f) * * *

(1) * * *

(ii) Signatures of two employees who have verified the net cash proceeds for the shift and the cash turned in. Unverified transfers of cash and/or cash equivalents are prohibited.

* * * * *

6. Amend § 542.11 by revising paragraph (e)(2)(ii) to read as follows:

§ 542.11 What are the minimum internal control standards for pari-mutuel wagering?

* * * * *

(e) * * *

(2) * * *

(ii) Signature of two employees who have verified the cash turned in for the shift. Unverified transfers of cash and/or cash equivalents are prohibited.

* * * * *

7. Amend § 542.13 by revising paragraph (f)(1) to read as follows:

§ 542.13 What are the minimum internal control standards for gaming machines?

* * * * *

(f) * * *

(1) The gaming machine booths and change banks that are active during the shift shall be counted down and reconciled each shift by two employees utilizing appropriate accountability documentation. Unverified transfers of cash and/or cash equivalents are prohibited.

* * * * *

8. Amend § 542.14 by revising paragraphs (d)(2) and (3) to read as follows and by removing paragraph (d)(4):

§ 542.14 What are the minimum internal control standards for the cage?

* * * * *

(d) * * *

(2) The cage and vault (including coin room) inventories shall be counted by the oncoming and outgoing cashiers. These employees shall make individual counts for comparison for accuracy and maintenance of individual accountability. Such counts shall be recorded at the end of each shift during which activity took place. All discrepancies shall be noted and investigated. Unverified transfers of cash and/or cash equivalents are prohibited.

(3) The Tribal gaming regulatory authority, or the gaming operation as approved by the Tribal gaming regulatory authority, shall establish and the gaming operation shall comply with a minimum bankroll formula to ensure the gaming operation maintains cash or cash equivalents (on hand and in the bank, if readily accessible) in an amount sufficient to satisfy obligations to the gaming operation's customers as they are incurred. A suggested bankroll formula will be provided by the Commission upon request.

* * * * *

9. Amend § 542.17 by revising paragraphs (b) introductory text and (c) to read as follows and by removing paragraph (d):

§ 542.17 What are the minimum internal control standards for the complimentary services or items?

* * * * *

(b) At least monthly, accounting, information technology, or audit personnel that cannot grant or receive complimentary privileges shall prepare reports that include the following information for all complimentary items and services equal to or exceeding $100.00 or an amount established by the tribal gaming regulatory authority, which shall not be greater than $100:

* * * * *

(c) The internal audit or accounting departments shall review the reports required in paragraph (b) of this section at least monthly. These reports shall be made available to the Tribe, Tribal gaming regulatory authority, audit committee, other entity designated by the Tribe, and the Commission upon request.

10. Amend § 542.21 by revising paragraph (f)(4)(ii) to read as follows and by removing paragraphs (f)(4)(iii) and (12):

§ 542.21 What are the minimum internal control standards for drop and count for Tier A gaming operations?

* * * * *

(f) * * *

(4) * * *

(ii) Corrections to information originally recorded by the count team on soft count documentation shall be made by drawing a single line through the error, writing the correct figure above the original figure, and then obtaining the initials of at least two count team members who verified the change.

* * * * *

11. Amend § 542.22 by adding paragraph (g) to read as follows:

§ 542.22 What are the minimum internal control standards for internal audit for Tier A gaming operations?

* * * * *

(g) *Internal Audit Guidelines.* In connection with the internal audit testing pursuant to paragraph (b)(1) of this section, the Commission shall develop recommended Internal Audit Guidelines, which shall be available upon request.

12. Amend § 542.23 by revising paragraph (n)(3) introductory text to read as follows:

§ 542.23 What are the minimum internal control standards for surveillance for Tier A gaming operations?

* * * * *

(n) * * *

(3) *Wide-area progressive machine.* Wide-area progressive gaming machines offering a base payout amount of $1 million or more and monitored by an independent vendor utilizing an on-line progressive computer system shall be recorded by a dedicated camera(s) to provide coverage of:

* * * * *

13. Amend § 542.31 by revising paragraph (f)(4)(ii) to read as follows and by removing paragraphs (f)(4)(iii) and (12):

§ 542.31 What are the minimum internal control standards for drop and count for Tier B gaming operations?

* * * * *

(f) * * *

(4) * * *

(ii) Corrections to information originally recorded by the count team on soft count documentation shall be made by drawing a single line through the error, writing the correct figure above the original figure, and then obtaining the initials of at least two count team members who verified the change.

* * * * *

14. Amend § 542.32 by adding paragraph (g) to read as follows:

§ 542.32 What are the minimum internal control standards for internal audit for Tier B gaming operations?

* * * * *

(g) *Internal Audit Guidelines.* In connection with the internal audit testing pursuant to paragraph (b)(1) of this section, the Commission shall develop recommended Internal Audit Guidelines, which shall be available upon request.

15. Amend § 542.33 by revising paragraph (q)(3) introductory text to read as follows:

§ 542.33 What are the minimum internal control standards for surveillance for Tier B gaming operations?

* * * * *

(q) * * *

(3) *Wide-area progressive machine.* Wide-area progressive gaming machines offering a base payout amount of $1 million or more and monitored by an independent vendor utilizing an on-line progressive computer system shall be recorded by a dedicated camera(s) to provide coverage of:

* * * * *

16. Amend § 542.41 by revising paragraph (f)(4)(ii) to read as follows and by removing paragraphs (f)(4)(iii) and (12):

§ 542.41 What are the minimum internal control standards for drop and count for Tier C gaming operations?

* * * * *

(f) * * *

(4) * * *

(ii) Corrections to information originally recorded by the count team on soft count documentation shall be made by drawing a single line through the error, writing the correct figure above the original figure, and then obtaining the initials of at least two count team members who verified the change.

* * * * *

17. Amend § 542.42 by adding paragraph (g) to read as follows:

§ 542.42 What are the minimum internal control standards for internal audit for Tier C gaming operations?

* * * * *

(g) *Internal Audit Guidelines.* In connection with the internal audit testing pursuant to paragraph (b)(1) of this section, the Commission shall develop recommended Internal Audit Guidelines, which shall be available upon request.

18. Amend § 542.43 by revising paragraph (r)(3) introductory text to read as follows:

§ 542.43 What are the minimum internal control standards for surveillance for Tier C gaming operations?

* * * * *

(r) * * *

(3) *Wide-area progressive machine.* Wide-area progressive gaming machines offering a base payout amount of $1 million or more and monitored by an independent vendor utilizing an on-line progressive computer system shall be recorded by a dedicated camera(s) to provide coverage of:

* * * * *

Signed in Washington, DC, this 4th day of March, 2005.

Philip N. Hogen,

Chairman.

Nelson Westrin,

Vice-Chairman.

Cloyce Choney,

Commissioner.

[FR Doc. 05–4665 Filed 3–9–05; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–163314–03]

RIN 1545–BC88

Transactions Involving the Transfer of No Net Value

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations providing guidance regarding corporate formations, reorganizations, and liquidations of insolvent corporations. These regulations provide rules requiring the exchange (or, in the case of section 332, a distribution) of net value for the nonrecognition rules of subchapter C to apply to the transaction. The regulations also provide guidance on determining when and to what extent creditors of a corporation will be treated as proprietors of the corporation in determining whether continuity of interest is preserved in a potential reorganization. Finally, the regulations provide guidance on whether a distribution in cancellation or redemption of less than all of the shares one corporation owns in another corporation satisfies the requirements of section 332. The proposed regulations affect corporations and their shareholders.

DATES: Written and electronic comments and requests for a public hearing must be received by June 8, 2005.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–163314–03), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. to 4 p.m. to CC:PA:LPD:PR (REG–163314–03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington DC or sent electronically, via the IRS Internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS and REG–163314–03).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations on the reorganization provisions and regarding issues raised by the proposed regulations with respect to provisions other than those related to corporate liquidations and subchapter K, Jean Brenner, (202) 622–7790; concerning the proposed regulations on corporate liquidations, Sean McKeever, (202) 622–7750; concerning the application of the principles of the proposed regulations to transfers of property to partnerships under subchapter K, Jeanne Sullivan or Michael Goldman, (202) 622–3070; concerning submissions of comments and/or requests for a public hearing, Treena Garrett, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

General Background

The IRS and the Treasury Department believe that there is a need to provide a comprehensive set of rules addressing the application of the nonrecognition rules of subchapter C of the Internal Revenue Code (Code) to transactions involving insolvent corporations and to other transactions that raise similar issues. The proposed regulations provide three sets of rules, the principal one of which is that the nonrecognition rules of subchapter C do not apply unless there is an exchange (or, in the case of section 332, a distribution) of net value (the ''net value requirement''). The proposed regulations also provide guidance on the circumstances in which (and the extent to which) creditors of a corporation will be treated as proprietors of the corporation in determining whether continuity of interest is preserved in a potential reorganization. The proposed regulations further provide guidance on whether a distribution in cancellation or redemption of less than all of the shares one corporation owns in another corporation satisfies the requirements of section 332. Each of these rules is discussed separately in this preamble.

Explanation of Provisions

Exchange of Net Value Requirement

Background

In subchapter C, each of the rules described below that provides for the general nonrecognition of gain or loss refers to a distribution in cancellation or redemption of stock or an exchange for stock. Section 332 provides, in part, that ''[n]o gain or loss shall be recognized on the receipt by a corporation of property distributed in complete liquidation of another corporation * * * only if * * * the distribution is by such other corporation *in complete cancellation or redemption of all its stock*.'' Section 351 provides, in part, that ''[n]o gain or loss shall be recognized if property is transferred to a corporation by one or more persons solely *in exchange for stock* in such corporation.'' Section 354 provides, in part, that ''[n]o gain or loss shall be recognized if stock or securities in a corporation a party to a reorganization are * * * *exchanged solely for stock or securities* * * * in another corporation a party to the reorganization.'' Finally, section 361 provides that ''[n]o gain or loss shall be recognized to a corporation if such corporation is a party to a reorganization and *exchanges property * * * solely for stock or securities* in another corporation a party to the reorganization.''

The authorities interpreting section 332 have consistently concluded that the language of the statute referring to a distribution in complete cancellation or redemption of stock requires a distribution of net value. Section 1.332–2(b) provides that section 332 applies only if a parent receives at least partial payment for the stock that it owns in the liquidating corporation. Such payment could not occur unless there were a distribution of net value. The courts have focused in numerous cases on the effect of liabilities on the distribution requirement of section 332. In *H. G. Hill Stores, Inc.* v. *Commissioner,* 44 B.T.A. 1182 (1941), a subsidiary liquidated and distributed its assets and liabilities to its parent in cancellation of its indebtedness to its parent. The court interpreted the phrase ''in complete cancellation or redemption of all its stock'' as requiring that a distribution be made to the parent in its capacity as a stockholder in order for section 112(b)(6) (the predecessor of section 332) to apply and, thus, held that section 112(b)(6) did not apply because the parent corporation received payment in its capacity as a creditor and not in its capacity as a stockholder. See also Rev. Ruls. 2003–125 (2003–52 I.R.B. 1243), 70–489 (1970–2 C.B. 53), and 59–296 (1959–2 C.B. 87).

Rev. Rul. 59–296 holds that the principles relevant to liquidations under section 332 also apply to reorganizations under section 368. However, other authorities are not consistent with the approach of Rev. Rul. 59–296. Most notably, in *Norman Scott, Inc.* v. *Commissioner,* 48 T.C. 598 (1967), the Tax Court held that a transaction involving an insolvent target corporation qualified as a reorganization under section 368(a)(1)(A).

The IRS and the Treasury Department have decided to resolve the uncertainties by generally adopting a net value requirement for each of the described nonrecognition rules in subchapter C. The net value requirement generally requires that there be an exchange of property for stock, or in the case of section 332, a distribution of property in cancellation or redemption of stock. The IRS and the Treasury Department believe that the net value requirement is the appropriate unifying standard because it is more consistent with the statutory framework of subchapter C, case law, and published guidance than any other approach considered. In addition, the IRS and the Treasury Department believe that the net value requirement is the appropriate standard because transactions that fail the requirement, that is, transfers of property in exchange for the assumption of liabilities or in satisfaction of liabilities, resemble sales and should not receive nonrecognition treatment.

The IRS and the Treasury Department considered several other approaches to unify and rationalize the nonrecognition rules of subchapter C as they applied to transactions involving insolvent corporations. The IRS and the Treasury Department considered whether there should be special rules for potential nonrecognition transactions between members of a consolidated group. Such rules might disregard the various exchange requirements in the statute because of the single entity principles generally applicable to corporations joining in the filing of a consolidated return. This approach was rejected because there is no consolidated return policy that compels a different set of rules for potential nonrecognition transactions between members of a consolidated group. Cf. § 1.1502–35T(f)(1); Notice 94–49 (1994–1 C.B. 358). The current intercompany transaction rules (in particular those regarding successors in § 1.1502–13(j)) could be modified to extend deferral of gain and loss to additional situations as long as the assets remained in the consolidated group pending later acceleration events that befall the assets or successor entities. However, no such rules are being proposed because the case for treating the transferor and transferee members as a single entity seems weakest when the group's equity investment in the transferor has been eliminated.

The IRS and the Treasury Department also considered whether satisfying the words of the relevant statutory provisions that describe the relationship of the parties to a transaction should be sufficient for applying the nonrecognition rules to a transaction between the parties. This approach would essentially take the position that the words of distribution or exchange in the statute do not state a separate requirement but merely describe the most common form of the transaction to which the provision is intended to apply. For example, under this approach, it would be sufficient for a transaction to qualify as a distribution in complete liquidation under section 332 if the corporation to which assets are transferred owned stock meeting the requirements of section 1504(a)(2) at the time of the transfer. Also, under this approach, it would be sufficient for a transaction to qualify as a transfer under section 351 if a transferor of assets were in control (as defined in section 368(c)) of the corporation to which assets are transferred immediately after the transaction. However, this approach would require distinguishing, when the structure of the statute does not, between parts of a statute that impose requirements and other parts that do not.

Explanation of rules

Net Value Requirement

For potential liquidations under section 332, the net value requirement is effected by the partial payment rule in § 1.332–2(b) of the current regulations. The proposed regulations make no modifications to this rule, except, as discussed below, for transactions in which the recipient corporation owns shares of multiple classes of stock in the dissolving corporation. The proposed regulations also make minor changes to other sections of the regulations under section 332 to conform those regulations to changes in the statute.

For potential transactions under section 351, the proposed regulations add § 1.351–1(a)(1)(iii)(A), which requires a surrender of net value and, in paragraph (a)(1)(iii)(B), a receipt of net value. This rule is similar to that for potential asset reorganizations,

discussed below. The proposed regulations make minor changes to other sections of the regulations under section 351 to conform those regulations to changes in the statute.

For potential reorganizations under section 368, the proposed regulations modify § 1.368–1(b)(1) to add the requirement that there be an exchange of net value. Section 1.368–1(f) of the proposed regulations sets forth the rules for determining whether there is an exchange of net value. These rules require, in paragraph (f)(2)(i) for potential asset reorganizations and paragraph (f)(3)(i) for potential stock reorganizations, a surrender of net value and, in paragraph (f)(2)(ii) for potential asset reorganizations and paragraph (f)(3)(ii) for potential stock reorganizations, a receipt of net value. In a potential asset reorganization (one in which the target corporation would not recognize gain or loss under section 361), the target corporation surrenders net value if the fair market value of the property transferred by it to the acquiring corporation exceeds the sum of the amount of liabilities of the target corporation that are assumed by the acquiring corporation and the amount of any money and the fair market value of any property (other than stock permitted to be received under section 361(a) without the recognition of gain) received by the target corporation. This rule ensures that a target corporation transfers property in exchange for stock. The IRS and the Treasury Department believe that the proposed rule better identifies whether a target corporation transfers property in exchange for stock than a rule that looks to the issuance or failure to issue stock because, when the parties are related, the issuance or failure to issue stock might be meaningless.

In a potential stock reorganization (one which would be described in section 368(a)(1)(B) or section 368(a)(1)(A) by reason of section 368(a)(2)(E)), the rules are modified to reflect the fact that the target corporation remains in existence. A potential reorganization under section 368(a)(1)(A) by reason of section 368(a)(2)(E) must satisfy the asset reorganization test for the merger of the controlled corporation into the target corporation (for which test the controlled corporation is treated as the target corporation) and the stock reorganization test for the acquisition of the target corporation.

In a potential asset reorganization, the target corporation receives net value if the fair market value of the assets of the issuing corporation exceeds the amount of its liabilities immediately after the exchange. This rule ensures that the target corporation receives stock (or is deemed to receive stock under the ''meaningless gesture'' doctrine) having value. This rule is necessary because the IRS and the Treasury Department believe that the receipt of worthless stock in exchange for assets cannot be part of an exchange for stock.

Scope of Net Value Requirement

The proposed regulations provide in § 1.368–1(b)(1) that the net value requirement does not apply to reorganizations under section 368(a)(1)(E) and 368(a)(1)(F). The IRS and the Treasury Department recently issued final regulations (T.D. 9182, 70 FR 9219 (Feb. 25, 2005)) stating that a continuity of business enterprise and a continuity of interest are not required for a transaction to qualify as a reorganization under section 368(a)(1)(E) or (F) because applying the requirements in those contexts is not necessary to protect the policies underlying the reorganization provisions. Because the purpose underlying the net value requirement is the same as that underlying the continuity of interest requirement, the IRS and the Treasury Department have similarly concluded that applying the net value requirement to transactions under section 368(a)(1)(E) or (F) is not necessary to protect the policies underlying the reorganization provisions.

The proposed regulations also provide in § 1.368–1(b)(1) and § 1.368–1(f)(4) that the net value requirement does not apply to a limited class of transactions that qualify as reorganizations under section 368(a)(1)(D). That class of transactions are the transactions exemplified by *James Armour, Inc.* v. *Commissioner*, 43 T.C. 295 (1964), and Rev. Rul. 70–240 (1970–1 C.B. 81). The IRS and the Treasury Department acknowledge that the conclusions of the described authorities are inconsistent with the principles of the net value requirement. Nevertheless, the IRS and the Treasury Department currently desire to preserve the conclusions of these authorities while they more broadly study issues relating to acquisitive reorganizations under section 368(a)(1)(D), including the continuing vitality of various liquidation-reincorporation authorities after the enactment of the Tax Reform Act of 1986, Public Law 99–514 (100 Stat. 2085 (1986)). Consistent with the described authorities, the exception is limited to acquisitive reorganizations of solvent target corporations. The proposed regulations provide no specific guidance (other than in an example incorporating the facts of Rev. Rul. 70–240 (1980–1 C.B. 81)), other than with regard to the application of the net value requirement, on when a transaction will qualify as a reorganization under section 368(a)(1)(D). In this regard, compare *Armour* with *Warsaw Photographic Associates, Inc.* v. *Commissioner*, 84 T.C. 21 (1985).

Definition of Liabilities

In applying the proposed regulations, taxpayers must determine the amount of liabilities of the target corporation that are assumed by the acquiring corporation. Although the proposed regulations do not define the term liability, the IRS and the Treasury Department intend that the term be interpreted broadly. Thus, for purposes of the proposed regulations, a liability should include any obligation of a taxpayer, whether the obligation is debt for federal income tax purposes or whether the obligation is taken into account for the purpose of any other Code section. Generally, an obligation is something that reduces the net worth of the obligor. The IRS and the Treasury Department have proposed adopting a similar definition of liability for purposes of implementing section 358(h) in subchapter K. See Prop. Reg. § 1.752–1(a)(1)(ii) and Prop. Reg. § 1.752–7(b)(2)(ii) (REG–106736–00, 68 FR 37434 (June 24, 2003), 2003–28 I.R.B. 46).

Amount of Liabilities

The proposed regulations provide no specific guidance on determining the amount of a liability. The IRS and the Treasury Department are currently considering various approaches to determining the amount of a liability. One approach would be to treat the amount of a liability represented by a debt instrument as its adjusted issue price determined under sections 1271 through 1275 of the Code (the OID rules) (perhaps with exceptions for certain contingent payment debt instruments) while treating the amount of other liabilities as the value of such liabilities. Another approach would be to treat the amount of all liabilities as the value of such liabilities. Other approaches could borrow in whole or in part from other authorities such as those relevant to the determination of insolvency under section 108(d)(3). One method for valuing liabilities is to determine the amount of cash that a willing assignor would pay to a willing assignee to assume the liability in an arm's-length transaction. Cf. Prop. Reg. § 1.752–7(b)(2)(ii).

In the course of developing these regulations, the IRS and the Treasury Department considered special issues related to the assumption of nonrecourse liabilities in the context of a transaction to which section 332, 351, or 368 might apply. The IRS and the Treasury Department are considering a rule similar to the one in Rev. Rul. 92–53 (1992–2 C.B. 48) that would disregard the amount by which a nonrecourse liability exceeds the fair market value of the property securing the liability when determining the amount of liabilities that are assumed. For example, under such a rule, if an individual transfers an apartment building with a fair market value of $175x subject to a nonrecourse obligation of $190x and an adjacent lot of land with a fair market value of $10x to a corporation, the transferor will have surrendered net value because the fair market value of the assets transferred ($175x + $10x) exceeds the amount of the liabilities assumed ($190x–$15x, the amount of the excess nonrecourse indebtedness). Any rule disregarding excess nonrecourse indebtedness would be limited to the application of the net value requirement and would have no relevance for other federal income tax purposes, such as the determination of the amount realized under section 1001. Comments are requested regarding the treatment of nonrecourse indebtedness and the effect of such treatment when both property subject to the nonrecourse indebtedness and other property are transferred.

Assumption of Liabilities

In general, the IRS and the Treasury Department believe that the principles of section 357(d) should be applied to determine whether a liability is assumed when more than one person might bear responsibility for the liability. Comments are requested regarding whether and to what extent the principles of section 357(d) should be incorporated into the regulations.

The IRS and the Treasury Department believe that transfers of assets in satisfaction of liabilities should be treated the same as transfers of assets in exchange for the assumption of liabilities. Accordingly, in determining whether there is a surrender of net value, the proposed regulations treat any obligation of the target corporation for which the acquiring corporation is the obligee as a liability assumed by the acquiring corporation.

In Connection With

The proposed regulations take into account not only liabilities assumed in the exchange, but also liabilities assumed ''in connection with'' the exchange. The proposed regulations include this rule so that the timing of an acquiring corporation's assumption of a target corporation's liability (or a creditor's discharge of a target corporation's indebtedness), whether before an exchange, in the exchange, or after the exchange, will have the same effect in determining whether there is a surrender of net value in the exchange. The proposed regulations also take into account, in determining whether there is a surrender of net value, money and other nonstock consideration received by the target corporation in connection with the exchange.

The IRS and the Treasury Department intend that the substance-over-form doctrine and other nonstatutory doctrines be used in addition to the ''in connection with'' rule in determining whether the purposes and requirements of the net value requirement are satisfied. Cf. Rev. Rul. 68–602 (1968–2 C.B. 135) (holding that a parent corporation's cancellation of a wholly-owned subsidiary's indebtedness to it that is an integral part of a liquidation is transitory and, therefore, disregarded).

Section 368(a)(1)(C)

The proposed regulations remove the statement in § 1.368–2(d)(1) that the assumption of liabilities may so alter the character of a transaction as to place the transaction outside the purposes and assumptions of the reorganization provisions. Because the proposed regulations provide more specific guidance regarding when the assumption of liabilities will prevent a transaction from qualifying as a reorganization under section 368(a)(1)(C), the IRS and the Treasury Department believe the statement is unnecessary.

Section 721

The IRS and the Treasury Department recognize that the principles in the proposed rules under section 351 may be applied by analogy to other Code sections that are somewhat parallel in scope and effect, such as section 721, dealing with the contribution of property to a partnership in exchange for a partnership interest. The IRS and the Treasury Department request comments on whether rules similar to the rules of the proposed regulations should be proposed in the context of subchapter K and the considerations that might justify distinguishing the relevant provisions in subchapter K from those provisions that are the subject of these proposed regulations.

Continuity of Interest

Background

The Code provides general nonrecognition treatment for reorganizations described in section 368. A transaction must comply with both the statutory requirements of the reorganization provisions and various nonstatutory requirements, including the continuity of interest requirement, to qualify as a reorganization. See § 1.368–1(b). The purpose of the continuity of interest requirement is to ensure that reorganizations are limited to readjustments of continuing interests in property under modified corporate form and to prevent transactions that resemble sales from qualifying for nonrecognition of gain or loss available to corporate reorganizations. See §§ 1.368–1(b), 1.368–1(e)(1). Continuity of interest requires that a substantial part of the value of the proprietary interests in the target corporation be preserved in the reorganization. See § 1.368–1(e)(1); see also *LeTulle* v. *Scofield,* 308 U.S. 415 (1940); *Helvering* v. *Minnesota Tea Co.,* 296 U.S. 378 (1935); *Pinellas Ice & Cold Storage Co.* v. *Commissioner,* 287 U.S. 462 (1933); *Cortland Specialty Co.* v. *Commissioner,* 60 F.2d 937 (2d Cir. 1932), cert. denied, 288 U.S. 599 (1933).

Generally, it is the shareholders who hold the proprietary interests in a corporation. However, when a corporation is in bankruptcy, the corporation's stock may be worthless and eliminated in the restructuring. In this case, when the corporation engages in a potential reorganization, its creditors may receive acquiring corporation stock in exchange for their claims and its shareholders may receive nothing. Thus, without special rules, most potential reorganizations of corporations in bankruptcy would fail the continuity of interest requirement. The Supreme Court addressed this problem in *Helvering* v. *Alabama Asphaltic Limestone Co.,* 315 U.S. 179 (1942), in which it held that, for practical purposes, the old continuity of interest in the shareholders shifted to the creditors not later than the time ''when the creditors took steps to enforce their demands against the insolvent debtor. In this case, that was the date of the institution of bankruptcy proceedings. From that time on, they had effective command over the property.'' See also *Palm Springs Holding Corp.* v. *Commissioner,* 315 U.S. 185 (1942) (holding that the legal procedure employed by the creditors to obtain effective command over a corporation's property was not material when the corporation was insolvent).

Notwithstanding *Palm Springs,* it is not clear when creditors of an insolvent corporation not in a title 11 or similar case may be considered proprietors for purposes of satisfying the continuity of interest requirement.

In *Atlas Oil & Refining Corp.* v. *Commissioner,* 36 T.C. 675 (1961), the court held that only creditors who in fact receive stock in the acquiring corporation, by relation back, can be deemed to have been equity owners at the time of the transfer. The court stated that the fact that a more senior class of creditors may have had ''effective command'' over the assets in the case will not make them proprietors if they do not in fact exercise their right to receive stock in the acquiring corporation.

In the Bankruptcy Tax Act of 1980, Public Law 96–589 (94 Stat. 3389 (1980)), Congress added section 368(a)(1)(G), providing for a new type of reorganization applicable to corporations in title 11 or similar cases. In the legislative history to that statute, Congress stated its expectation that the courts and the Treasury Department would determine whether the continuity of interest requirement is satisfied in a potential reorganization under section 368(a)(1)(G) by treating as proprietors the most senior class of creditors who received stock, together with all interests equal and junior to them, including shareholders. See S. Rep. No. 1035, 96th Cong., 2d Sess. 36–37 (1980). This formulation is similar to the relation back analysis that the Tax Court used in *Atlas Oil.*

Explanation of Provisions

The proposed regulations add new § 1.368–1(e)(6), which describes the circumstances in which creditors of a corporation generally, and which creditors in particular, will be treated as holding a proprietary interest in a target corporation immediately before a potential reorganization. In general, the proposed rules adopt the standard for reorganizations under section 368(a)(1)(G) recommended in the Senate Finance Committee Report to the Bankruptcy Tax Act of 1980. The proposed regulations also provide that creditors of an insolvent target corporation not in a title 11 or similar case may be treated as holding a proprietary interest in the corporation even though they take no steps to obtain effective command over the corporation's property, other than their agreement to receive stock in the potential reorganization. The proposed regulations, at § 1.368–1(e)(6)(ii), provide specific guidance on how to quantify the proprietary interest of the target corporation so that taxpayers may determine whether a substantial part of the value of the proprietary interests in the target corporation is preserved in the potential reorganization. Because a creditor of a corporation may hold claims in more than one class, the proposed regulations generally refer to claims of a particular class of creditors rather than to creditors in a particular class.

The proposed regulations treat claims of the most senior class of creditors to receive a proprietary interest in the issuing corporation and claims of all equal classes of creditors (together, the senior claims) differently from the claims of classes of creditors junior to the senior claims (the junior claims). The proposed regulations treat senior claims as representing, in part, a creditor claim against the corporation, and, in part, a proprietary interest in the corporation. This rule mitigates the adverse effect on continuity of interest of senior creditors seeking payment primarily in nonstock consideration while still taking some payment in shares of stock of the acquiring corporation. The determination of what part of a senior claim is a proprietary interest in the target corporation is made by calculating the average treatment for all senior claims. Thus, the proposed regulations, at § 1.368–1(e)(2)(ii)(B), provide that the value of a proprietary interest in the target corporation represented by a senior claim is determined by multiplying the fair market value of the creditor's claim by a fraction, the numerator of which is the fair market value of the proprietary interests in the issuing corporation that are received in the aggregate in exchange for the senior claims, and the denominator of which is the sum of the amount of money and the fair market value of all other consideration (including the proprietary interests in the issuing corporation) received in the aggregate in exchange for such claims. The effect of this rule is that there is 100 percent continuity of interest if each senior claim is satisfied with the same ratio of stock to nonstock consideration and no junior claim is satisfied with nonstock consideration.

The proposed regulations, at § 1.368–1(e)(6)(ii)(A), provide that the entire amount of a junior claim represents a proprietary interest in the target corporation immediately before the potential reorganization. Thus, the value of the proprietary interest represented by that claim is the fair market value of the claim (which value is generally determined by reference to the amount of money and the fair market value of the consideration received in exchange therefor).

The rules in the proposed regulations are intended to work in conjunction with the current continuity of interest rules. Accordingly, the proposed regulations modify § 1.368–1(e)(1)(ii), relating to the effect on continuity of interest of distributions or redemptions before a potential reorganization, and § 1.368–1(e)(2), relating to the effect on continuity of interest of acquisitions of proprietary interests by persons related to the issuing corporation, to ensure that the purpose of these rules is effected when creditors' claims represent the proprietary interests in the target corporation.

Section 332

Background

Section 332 requires that a subsidiary's liquidating distribution to its parent corporation be in complete cancellation or redemption of all its stock. In *Spaulding Bakeries, Inc.* v. *Commissioner,* 252 F.2d 693 (2d Cir. 1958), aff'g 27 T.C. 684 (1957), the Second Circuit concluded that for a distribution to be made in cancellation or redemption of ''all the stock,'' payment must be made on each class of stock. See also *H. K. Porter Co.* v. *Commissioner,* 87 T.C. 689 (1986).

Explanation of Provisions

The current regulations provide that section 332 applies only to those cases in which the recipient corporation receives at least partial payment for the stock that it owns in the liquidating corporation. The proposed regulations clarify that section 332 applies only to those cases in which the recipient corporation receives at least partial payment for each class of stock that it owns in the liquidating corporation, an interpretation consistent with the Second Circuit's holding in *Spaulding Bakeries* and the Tax Court's holding in *H. K. Porter.* The IRS and the Treasury Department have adopted this approach because they believe that it is appropriate for a taxpayer to recognize loss when it fails to receive a distribution on a class of stock in liquidation of its subsidiary. The recipient corporation would recognize such a loss if the distribution qualified as a reorganization.

The proposed regulations also confirm that when the liquidation fails to qualify under section 332 because the recipient corporation did not receive at least partial payment for each class of stock but did receive at least partial payment for at least one class of stock, the transaction may qualify as a

corporate reorganization under section 368.

Proposed Effective Date

These proposed regulations will apply to transactions that occur after the date they are published as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) does not apply to these proposed regulations and, because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and 8 copies) or comments transmitted via Internet that are submitted timely to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these proposed regulations are Jean Brenner and Sean McKeever of the Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by revising the entry for ''Section 1.351–1'' to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.351–1 also issued under 26 U.S.C. 351. * * *

Par. 2. Section 1.332–2 is amended by:

1. Revising the first sentence of paragraph (a).
2. Revising paragraph (b).
3. Revising the heading of the Example in paragraph (e).
4. Adding *Example* 2 to paragraph (e).

The revisions and addition read as follows:

§ 1.332–2 Requirements for nonrecognition of gain or loss.

(a) The nonrecognition of gain or loss is limited to the receipt of property by a corporation that is the actual owner of stock (in the liquidating corporation) meeting the requirements of section 1504(a)(2). * * *

(b) Section 332 applies only when the recipient corporation receives at least partial payment for each class of stock that it owns in the liquidating corporation. If section 332 does not apply, see section 165(g) regarding the allowance of losses for worthless securities for a class of stock for which no payment is received. Further, if section 332 does not apply and the recipient corporation receives partial payment for at least one class of stock that it owns in the liquidating corporation, see section 368(a)(1) regarding potential qualification of the distribution as a reorganization. If section 332 does not apply and the distribution does not qualify as a reorganization, see section 331 for those classes of stock for which partial payment is received.

* * * * *

(e) * * *

Example 1. * * *

Example 2. P Corporation owns all of the outstanding preferred and common stock of Q Corporation. The preferred stock is not stock described in section 1504(a)(4). The fair market value of Q Corporation's assets exceeds the amount of its liabilities but does not exceed the liquidation preference on the Q Corporation's preferred stock. Q Corporation liquidates and distributes all of its assets to P Corporation. P Corporation receives partial payment for its Q Corporation preferred stock but receives nothing for its Q Corporation common stock. The receipt by P Corporation of the properties of Q Corporation is not a distribution received by P Corporation in complete liquidation of Q Corporation within the meaning of section 332. Thus, under section 165(g), P Corporation is entitled to a worthless security deduction for its Q Corporation common stock. The transaction may qualify as a reorganization under section 368(a)(1)(C). If the transaction does not qualify as a reorganization, P Corporation will recognize gain or loss on its Q Corporation preferred stock under section 331.

Par. 3. Section 1.351–1 is amended by:

1. Revising the first sentence of paragraph (a)(1) introductory text.
2. Adding a sentence after the last sentence in paragraph (a)(1) introductory text and revising the phrase ''For purposes of this section'' at the end of paragraph (a)(1) introductory text to read ''In addition, for purposes of this section''.
3. Revising paragraphs (a)(1)(i) and (a)(1)(ii).
4. Removing the concluding text immediately following paragraph (a)(1)(ii).
5. Adding paragraphs (a)(1)(iii) and (a)(1)(iv).
6. Adding *Example 4* at the end of paragraph (a)(2).
7. Revising paragraph (b)(1).

The revisions, removal, and additions read as follows:

§ 1.351–1 Transfer to corporation controlled by transferor.

(a)(1) Section 351(a) provides, in general, for the nonrecognition of gain or loss upon the transfer by one or more persons of property to a corporation solely in exchange for stock of such corporation if, immediately after the exchange, such person or persons are in control of the corporation to which the property was transferred. * * * For purposes of this section, stock rights and stock warrants are not included in the term *stock.* In addition, for purposes of this section—

(i) Stock will not be treated as issued for property if it is issued for services rendered or to be rendered to or for the benefit of the issuing corporation;

(ii) Stock will not be treated as issued for property if it is issued for property which is of relatively small value in comparison to the value of the stock already owned (or to be received for services) by the person who transferred such property and the primary purpose of the transfer is to qualify under this section the exchanges of property by other persons transferring property; and

(iii) Stock will not be treated as issued for property if either—

(A) The fair market value of the transferred property does not exceed the

sum of the amount of liabilities of the transferor that are assumed by the transferee in connection with the transfer and the amount of any money and the fair market value of any other property (other than stock permitted to be received under section 351(a) without the recognition of gain) received by the transferor in connection with the transfer. For this purpose, any obligation of the transferor for which the transferee is the obligee that is extinguished for federal income tax purposes in connection with the transfer is treated as a liability assumed by the transferee; or

(B) The fair market value of the assets of the transferee does not exceed the amount of its liabilities immediately after the transfer;

(iv) Paragraph (a)(1)(iii) of this section applies to transfers occurring after the date these proposed regulations are published as final regulations in the **Federal Register**.

(2) * * *

* * * * *

Example 4. A, an individual, transfers an apartment building with a fair market value of $175x to Corporation X. The building is subject to a nonrecourse obligation of $190x and no other asset is subject to that liability. A receives 10 shares of Corporation X stock in the exchange. Immediately after the exchange, Corporation X is solvent and A owns 100% of its outstanding stock. Under paragraph (a)(1)(iii) of this section, the 10 shares of Corporation X stock received by A will not be treated as issued for property because the fair market value of the apartment building does not exceed the amount of A's liabilities assumed by Corporation X. Therefore, section 351 does not apply to the exchange.

* * * * *

(b)(1) When property is transferred to a corporation by two or more persons in exchange for stock, as described in paragraph (a) of this section, and the stock received is received in disproportion to the transferor's prior interest in such property, the entire transaction will be given tax effect in accordance with its true nature, and the transaction may be treated as if the stock had first been received in proportion and then some of such stock had been used to make gifts (section 2501 *et seq.*), to pay compensation (sections 61(a)(1) and 83(a)), or to satisfy obligations of the transferor of any kind.

* * * * *

Par. 4. Section 1.368–1 is amended by:

1. Removing the last sentence of paragraph (a).

2. Redesignating paragraph (b) as paragraph (b)(1).

3. Removing the third sentence of paragraph (b)(1) and adding two sentences in its place.

4. Removing the seventh sentence of paragraph (b)(1).

5. Adding paragraph (b)(2).

6. Adding a sentence after the fifth sentence of paragraph (e)(1)(i).

7. Adding a sentence at the end of paragraph (e)(1)(ii).

8. Revising the text of paragraph (e)(2).

9. Redesignating paragraphs (e)(6) and (e)(7) as paragraphs (e)(7) and (e)(8), respectively, and adding a new paragraph (e)(6).

10. Adding *Example 10* to the end of paragraph (e)(7).

11. Adding a sentence at the end of paragraph (e)(8).

12. Adding paragraph (f).

The additions and revisions read as follows:

§ 1.368–1 Purpose and scope of exception to reorganization exchanges.

* * * * *

(b)(1) * * * Requisite to a reorganization under the Internal Revenue Code are a continuity of business enterprise through the issuing corporation under the modified corporate form as described in paragraph (d) of this section, a continuity of interest as described in paragraph (e) of this section (except as provided in section 368(a)(1)(D)), and an exchange of net value as described in paragraph (f) of this section. Notwithstanding the requirements of this paragraph (b)(1), an exchange of net value is not required for a transaction to qualify as a reorganization under section 368(a)(1)(E) or (F) and, to the extent provided in paragraph (f)(4), for a transaction to qualify as a reorganization under section 368(a)(1)(D). * * *

(2) *Effective dates.* The third and fourth sentences of paragraph (b)(1) of this section apply to transactions occurring after the date these proposed regulations are published as final regulations in the **Federal Register**. The fifth and sixth sentences apply to transactions occurring after January 28, 1998, except that they do not apply to any transaction occurring pursuant to a written agreement which is binding on January 28, 1998, and at all times thereafter.

* * * * *

(e) * * *

(1) * * *

(i) * * * See paragraph (e)(6) of this section for rules related to when a creditor's claim against a target corporation is a proprietary interest in the corporation. * * *

(ii) * * * A proprietary interest in the target corporation is not preserved to the extent that creditors (or former creditors) of the target corporation that own a proprietary interest in the corporation under paragraph (e)(6) of this section (or would be so treated if they had received the consideration in the potential reorganization) receive payment for the claim prior to the potential reorganization.

(2) * * * A proprietary interest in the target corporation is not preserved if, in connection with a potential reorganization, a person related (as defined in paragraph (e)(3) of this section) to the issuing corporation acquires either a proprietary interest in the target corporation or stock of the issuing corporation that was furnished in exchange for a proprietary interest in the target corporation for consideration other than stock of the issuing corporation. The preceding sentence does not apply to the extent those persons who were the direct or indirect owners of the target corporation prior to the potential reorganization maintain a direct or indirect proprietary interest in the issuing corporation.

* * * * *

(6) *Creditors' claims as proprietary interests*—(i) *In general.* A creditor's claim against a target corporation may be a proprietary interest in the target corporation if the target corporation is in a title 11 or similar case (as defined in section 368(a)(3)) or the amount of the target corporation's liabilities exceeds the fair market value of its assets immediately prior to the potential reorganization. In such cases, if any creditor receives a proprietary interest in the issuing corporation in exchange for its claim, every claim of that class of creditors and every claim of all equal and junior classes of creditors (in addition to the claims of shareholders) is a proprietary interest in the target corporation immediately prior to the potential reorganization.

(ii) *Value of proprietary interest*—(A) *In general.* Generally, if a creditor's claim is a proprietary interest in the target corporation, the value of the proprietary interest is the fair market value of the creditor's claim.

(B) *Claims of creditors of most senior classes.* For a claim of the most senior class of creditors receiving a proprietary interest in the issuing corporation and a claim of any equal class of creditors, the value of the proprietary interest in the target corporation represented by the claim is determined by multiplying the fair market value of the claim by a fraction, the numerator of which is the fair market value of the proprietary interests in the issuing corporation that are received in the aggregate in

exchange for the claims of those classes of creditors, and the denominator of which is the sum of the amount of money and the fair market value of all other consideration (including the proprietary interests in the issuing corporation) received in the aggregate in exchange for such claims.

(iii) *Bifurcated claims.* If a creditor's claim is bifurcated into a secured claim and an unsecured claim pursuant to an order in a title 11 or similar case (as defined in section 368(a)(3)) or pursuant to an agreement between the creditor and the debtor, the bifurcation of the claim and the allocation of consideration to each of the resulting claims will be respected in applying the rules of this paragraph (e)(6).

(iv) *Effect of treating creditors as proprietors.* The treatment of a creditor's claim as a proprietary interest in the target corporation shall not preclude treating shares of the target corporation as proprietary interests in the target corporation.

(7) * * *

* * * * *

Example 10. Creditors treated as owning a proprietary interest. T has assets with a fair market value of $150x and liabilities of $200x. T has two classes of creditors, the senior creditors with claims of $50x, and the junior creditors with claims of $150x. T transfers all of its assets to P in exchange for $95x and shares of P stock with a fair market value of $55x. The T senior creditors receive in the aggregate $40x and P stock with a fair market value of $10x in exchange for their claims. Each T senior creditor receives stock and nonstock consideration in the same proportion. The T junior creditors receive $55x and P stock with a fair market value of $45x in exchange for their claims. The T shareholders receive no consideration in exchange for their T stock. Under paragraph (e)(6) of this section, because the amount of T's liabilities exceeds the fair market value of its assets immediately prior to the potential reorganization, the claims of the creditors of T may be proprietary interests in T. Because the senior creditors receive proprietary interests in P in the transaction in exchange for their claims, their claims and the claims of the junior creditors and the T shareholders are treated as proprietary interests in T immediately prior to the transaction. Under paragraph (e)(6)(ii) of this section, the value of the senior creditors' proprietary interests in T is $10x, the value of the proprietary interests in P that they received in exchange for their claims. In addition, the value of the junior creditors' proprietary interests in T immediately prior to the transaction is $100x, the value of their claims. Because P is treated as acquiring 50 percent of the value of the proprietary interests in T in exchange for P stock ($55x/$110x), a substantial part of the value of the proprietary interests in T is preserved. Therefore, the continuity of interest requirement is satisfied.

(8) * * * The sixth sentence of paragraph (e)(1)(i) of this section, the last sentence of paragraph (e)(1)(ii) of this section, paragraph (e)(2) of this section, paragraph (e)(6) of this section, and *Example 10* of paragraph (e)(7) of this section apply to transactions occurring after the date these proposed regulations are published as final regulations in the **Federal Register**.

(f) *Exchanges of net value*—(1) *General rule.* An exchange of net value requires that there be both a surrender of net value and a receipt of net value. Whether there is a surrender of net value is determined by reference to the assets and liabilities of the target corporation. Whether there is a receipt of net value is determined by reference to the assets and liabilities of the issuing corporation (as defined in paragraph (b) of this section). The purpose of the exchange of net value requirement is to prevent transactions that resemble sales (including transfers of assets in satisfaction of liabilities) from qualifying for nonrecognition of gain or loss available to corporate reorganizations.

(2) *Asset transactions.* There is an exchange of net value in a potential reorganization to which section 361 would apply only if—

(i) *Surrender of net value.* The fair market value of the property transferred by the target corporation to the acquiring corporation exceeds the sum of the amount of liabilities of the target corporation that are assumed by the acquiring corporation in connection with the exchange and the amount of any money and the fair market value of any other property (other than stock permitted to be received under section 361(a) without the recognition of gain) received by the target corporation in connection with the exchange. For this purpose, any obligation of the target corporation for which the acquiring corporation is the obligee that is extinguished for federal income tax purposes in connection with the exchange is treated as a liability assumed by the acquiring corporation; and

(ii) *Receipt of net value.* The fair market value of the assets of the issuing corporation exceeds the amount of its liabilities immediately after the exchange.

(3) *Stock transactions.* There is an exchange of net value in a potential reorganization under section 368(a)(1)(B) or section 368(a)(1)(A) by reason of section 368(a)(2)(E) only if—

(i) *Surrender of net value.* The fair market value of the assets of the target corporation exceeds the sum of the amount of the liabilities of the target corporation immediately prior to the exchange and the amount of any money and the fair market value of any other property (other than stock permitted to be received under section 354 without the recognition of gain and nonqualified preferred stock within the meaning of section 351(g)) received by the shareholders of the target corporation in connection with the exchange. For this purpose, assets of the target corporation that are not held immediately after the exchange and liabilities of the target corporation that are extinguished for federal income tax purposes in the exchange other than ones, if any, to the corporation into which the target corporation merges in the case of a potential reorganization under section 368(a)(1)(A) by reason of section 368(a)(2)(E) are disregarded; and

(ii) *Receipt of net value.* The fair market value of the assets of the issuing corporation exceeds the amount of its liabilities immediately after the exchange.

(4) *Exception.* The requirement that there be an exchange of net value does not apply to a transaction that would otherwise qualify as a reorganization under section 368(a)(1)(D) by reason of section 354 or so much of section 356 as relates to section 354, provided that the fair market value of the property transferred to the acquiring corporation by the target corporation exceeds the amount of liabilities of the target corporation immediately before the exchange (including any liabilities cancelled, extinguished, or assumed in connection with the exchange), and the fair market value of the assets of the acquiring corporation equals or exceeds the amount of its liabilities immediately after the exchange.

(5) *Examples.* For purposes of the examples in this paragraph (f)(5), each of P, S, and T is a corporation; all corporations have only one class of stock outstanding; A, B, C, and D are individuals; and the transaction is not otherwise subject to recharacterization. Except as otherwise provided, no person is related to any other person and the fair market value of the assets of each corporation exceeds the amount of its liabilities immediately prior to the transaction described in the example. The following examples illustrate the application of this paragraph (f).

Example 1. T has assets with a fair market value of $50x and liabilities of $75x, all of which are owed to A. T transfers all of its assets to S in exchange for S stock with a fair market value of $50x. T distributes the S stock to A in exchange for the T debt owed to A. T dissolves. T's shareholders receive nothing in exchange for their T stock. Under paragraph (f)(2)(i) of this section, T surrenders net value because the fair market value of the property transferred by T ($50x)

exceeds the sum of the amount of liabilities that are assumed by S in connection with the exchange ($0x) and the amount of any money and the fair market value of any other property (other than stock permitted to be received under section 361(a) without the recognition of gain) received by T in connection with the exchange ($0x). In addition, under paragraph (f)(2)(ii) of this section, T receives net value because the fair market value of the assets of S exceeds the amount of its liabilities immediately after the exchange. Therefore, under paragraph (f) of this section, there is an exchange of net value.

Example 2. P owns all of the stock of both S and T. T has assets with a fair market value of $100x and liabilities of $160x, all of which are owed to P. T transfers all of its assets to S in exchange for S stock with a fair market value of $100x. T distributes the S stock to P in exchange for the T debt owed to P. T dissolves. P receives nothing in exchange for its T stock. Under paragraph (f)(2)(i) of this section, T surrenders net value because the fair market value of the property transferred by T ($100x) exceeds the sum of the amount of liabilities of T assumed by S in connection with the exchange ($0x) and the amount of any money and the fair market value of any other property (other than stock permitted to be received under section 361(a) without the recognition of gain) received by T in connection with the exchange ($0x). In addition, under paragraph (f)(2)(ii) of this section, T receives net value because the fair market value of the assets of S exceeds the amount of its liabilities immediately after the exchange. Therefore, under paragraph (f) of this section, there is an exchange of net value. The result would be the same if no S stock were issued.

Example 3. The facts are the same as in *Example 2*, except that T's debt is owed to B. T transfers all of its assets to S in exchange for the assumption of T's liabilities. T dissolves. The obligation to B is outstanding immediately after the transfer. P receives nothing in exchange for its T stock. Under paragraph (f)(2)(i) of this section, T does not surrender net value because the fair market value of the property transferred by T ($100x) does not exceed the sum of the amount of liabilities of T assumed by S in connection with the exchange ($160x). Therefore, under paragraph (f) of this section, there is no exchange of net value. The result would be the same if S stock were issued.

Example 4. The facts are the same as in *Example 3*, except that S first assumes the T debt owed to B and subsequently T transfers all of its assets to S in exchange for S stock with a fair market value of $100x. If S's assumption of the T debt is made in connection with the subsequent transfer of T assets to S, under paragraph (f)(2)(i) of this section, T does not surrender net value because the fair market value of the property transferred by T ($100x) does not exceed the sum of the amount of liabilities of T assumed by S in connection with the exchange ($160x). Therefore, under paragraph (f) of this section, there is no exchange of net value.

Example 5. P owns 70% of the stock of T. A owns the remaining 30% of the stock of T. T has assets with a fair market value of $100x and liabilities of $160x, all of which are owed to P. T merges into P. A receives nothing in exchange for its T stock. Under (f)(2)(i) of this section, even though T's obligation to P is extinguished in the transaction, it is treated as a liability assumed by P. Thus, under paragraph (f)(2)(i) of this section, T does not surrender net value because the fair market value of the property transferred by T ($100x) does not exceed the sum of the amount of liabilities of T assumed by P in connection with the exchange ($160x). Therefore, under paragraph (f) of this section, there is no exchange of net value.

Example 6. A owns all of the stock of S. S has assets with a fair market value of $200x and liabilities of $500x, all of which are owed to T. The S debt has a fair market value of $200x. In addition to the S debt, T has other assets that have a fair market value of $700x. T has no liabilities. T transfers all of its assets to S in exchange for S stock with a fair market value of $900x. T distributes the S stock to its shareholders in exchange for their T stock. T dissolves. S cancels all of its stock held by its shareholders immediately prior to the exchange. Under paragraph (f)(2)(i) of this section, T surrenders net value because the fair market value of the property transferred by T ($900x) exceeds the sum of the amount of liabilities of T assumed by S in connection with the exchange ($0x) and the amount of any money and the fair market value of any other property (other than stock permitted to be received under section 361(a) without the recognition of gain) received by T in connection with the exchange ($0x). In addition, under paragraph (f)(2)(ii) of this section, T receives net value because the fair market value of the assets of S ($900x) exceeds the amount of the liabilities of S ($0x) immediately after the exchange. Therefore, under paragraph (f) of this section, there is an exchange of net value.

Example 7. P owns all of the stock of S. T has assets with a fair market value of $300x and liabilities of $650x, $500x of which are owed to P and $150x of which are owed to A. T merges into S. In the merger, P stock is issued to A in satisfaction of the debt owed to A by T. Also in the merger, P contributes to the capital of T the debt P is owed. Assume the merger would qualify as a reorganization under section 368(a)(1)(A) by reason of section 368(a)(2)(D) if the exchange of net value requirement in paragraph (f)(1) of this section did not apply. Whether there is a surrender of net value is determined by reference to the actual merger of T into S. Thus, T surrenders net value because the fair market value of the property transferred by T ($300x) exceeds the sum of the amount of liabilities of T assumed by S in connection with the exchange ($0x) and the amount of any money and the fair market value of any other property (other than stock permitted to be received under section 361(a) without the recognition of gain) received by T in connection with the exchange ($0x). Whether there is a receipt of net value is determined by reference to the issuing corporation, in this case, P. T receives net value because the fair market value of the assets of P exceeds the amount of the liabilities of P immediately after the exchange. Therefore, under paragraph (f) of this section, there is an exchange of net value.

Example 8. P owns all of the stock of both S and T. T transfers all of its assets to S in exchange for $34x, the assets' fair market value. Following this transfer, T pays its debts of $2x and dissolves, distributing the remaining $32x to P. Assume the transaction would qualify as a reorganization under section 368(a)(1)(D) by reason of section 354 or so much of section 356 as relates to section 354 if the net value requirement in paragraph (f)(1) of this section did not apply. Under paragraph (f)(2) of this section, there is no exchange of net value because the fair market value of the property transferred by T ($34x) does not exceed the amount of money received by T in connection with the exchange ($34x). However, under paragraph (f)(4) of this section, because the transaction would otherwise qualify as a reorganization under section 368(a)(1)(D) and the other requirements of paragraph (f)(4) of this section are satisfied, the exchange of net value requirement does not apply. Accordingly, the transaction qualifies as a reorganization under section 368(a)(1)(D).

Example 9. A and B own all of the stock of T. T has assets with a fair market value of $500x and liabilities of $900x, all of which are owed to C and D, security holders of T. P acquires all of the stock and securities of T in exchange for P voting stock. In the transaction, A and B receive nothing in exchange for their stock of T. C and D exchange all of their securities of T for stock of P. Under paragraph (f)(3)(i) of this section, there is a surrender of net value because the fair market value of the assets of T held immediately prior to the exchange that are held immediately after the exchange ($500x) exceeds the sum of the amount of liabilities of T immediately prior to the exchange ($0x, disregarding the liabilities of $900x extinguished in the exchange) and the amount of any money and the fair market value of any other property (other than stock permitted to be received under section 354 without the recognition of gain and nonqualified preferred stock within the meaning of section 351(g)) received by the shareholders of T ($0x). In addition, under paragraph (f)(3)(ii) of this section, there is a receipt of net value because the fair market value of the assets of P exceeds the amount of the liabilities of P immediately after the exchange. Therefore, under paragraph (f) of this section, there is an exchange of net value.

Example 10. A and B own all of the stock of P, and C and D own all of the stock of T. P has assets with a fair market value of $400x and liabilities of $500x, and T has assets with a fair market value of $1000x and liabilities of $600x. P acquires all of the stock of T. C and D exchange all of their T stock, with a fair market value of $400x, for P stock with a fair market value of $300x immediately after the transaction. P cancels all of the stock held by A and B immediately prior to the exchange. Under paragraph (f)(3)(i) of this section, there is a surrender of net value because the fair market value of the assets of T held immediately prior to the exchange that are held immediately after the exchange

($1000x) exceeds the amount of liabilities of T ($600x) immediately prior to the exchange and the amount of any money and the fair market value of any other property (other than stock permitted to be received under section 354 without the recognition of gain and nonqualified preferred stock within the meaning of section 351(g)) received by the shareholders of T ($0x). In addition, under paragraph (f)(3)(ii) of this section, there is a receipt of net value because the fair market value of the assets of P ($800x), which includes the fair market value of the stock of T, exceeds the amount of its liabilities ($500x) immediately after the exchange. Therefore, under paragraph (f) of this section, there is an exchange of net value. To the extent that C and D surrender T stock with a value in excess of the value of the P stock they receive, the tax consequences of the surrender of the additional stock are determined based on the facts and circumstances.

(6) *Effective date.* This paragraph (f) applies to transactions occurring after the date these proposed regulations are published as final regulations in the **Federal Register**.

Par. 5. Section 1.368–2 is amended by revising paragraph (d)(1) to read as follows:

§ 1.368–2 Definition of terms.

* * * * *

(d) * * *

(1)(i) One corporation must acquire substantially all the properties of another corporation solely in exchange for all or part of its own voting stock, or solely in exchange for all or a part of the voting stock of a corporation which is in control of the acquiring corporation. For example, Corporation P owns all the stock of Corporation A. All the properties of Corporation W are transferred to Corporation A either solely in exchange for voting stock of Corporation P or solely in exchange for less than 80 percent of the voting stock of Corporation A. Either of such transactions constitutes a reorganization under section 368(a)(1)(C). However, if the properties of Corporation W are acquired in exchange for voting stock of both Corporation P and Corporation A, the transaction will not constitute a reorganization under section 368(a)(1)(C). In determining whether the exchange meets the requirement of ''solely for voting stock,'' the assumption by the acquiring corporation of liabilities of the transferor corporation, or the fact that property acquired from the transferor corporation is subject to a liability, shall be disregarded. Section 368(a)(1)(C) does not prevent consideration of the effect of an assumption of liabilities on the general character of the transaction but merely provides that the requirement that the exchange be solely for voting stock is satisfied if the only additional consideration is an assumption of liabilities.

(ii) Paragraph (d)(1)(i) of this section applies to transactions occurring after the date these proposed regulations are published as final regulations in the **Federal Register**.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 05–4384 Filed 3–9–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Chapter I

[USCG–2004–19615]

Exclusion Zones for Marine LNG Spills

AGENCY: Coast Guard, DHS.

ACTION: Request for comments; reopening of comment period.

SUMMARY: At the request of the Attorney General of Rhode Island, the Coast Guard is reopening the public comment period on a petition from the City of Fall River, Massachusetts. Fall River?s petition asks the Coast Guard to promulgate regulations establishing thermal and vapor dispersion exclusion zones for marine spills of liquefied natural gas, similar to Department of Transportation regulations for such spills on land. The Attorney General of Rhode Island asked that we reopen the comment period for an additional sixty days, to allow his office to review a threat analysis being prepared for its consideration.

DATES: Comments and related material must reach the Docket Management Facility on or before May 9, 2005.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2004–19615 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) Web site: *http://dms.dot.gov.*

(2) Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

(3) Fax: 202–493–2251.

(4) Delivery: Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call Commander John Cushing at 202–267–1043 or e-mail *JCushing@comdt.uscg.mil.* If you have questions on viewing or submitting material to the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to submit comments and related material on the petition for rulemaking. All comments received will be posted, without change, to *http://dms.dot.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this notice (USCG–2004–19615), and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Viewing the comments: To view the comments, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on

April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Background and purpose: As we stated in the original notice and request for public comments (69 FR 63979, Nov. 3, 2004), the City of Fall River, Massachusetts, has petitioned the Coast Guard to promulgate regulations establishing thermal and vapor dispersion exclusion zone requirements for liquefied natural gas (LNG) spills on water. The City asks that these regulations be similar to Department of Transportation regulations for LNG spills on land, contained in 49 CFR 193.2057 and 193.2059. In our original notice, we provided a public comment period that ended February 1, 2005. At the end of that comment period, we received a letter from the Attorney General of Rhode Island that read in part: ''I wish to emphasize that my office is waiting for the completion of a Threat Analysis. I am formally requesting that the public comment period in this docket remain open for an additional sixty (60) days to allow for consideration of [that] report.'' In light of this request, the Coast Guard is providing an additional sixty-day comment period. The public is invited to review the material contained in the docket and submit relevant comments. The Coast Guard will consider the City's petition, any comments received from the public, and other information to determine whether or not to initiate the requested rulemaking.

Dated: March 2, 2005.

Howard L. Hime,

Acting Director of Standards, Marine Safety, Security, and Environmental Protection, U.S. Coast Guard.

[FR Doc. 05–4600 Filed 3–9–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R01–OAR–2005–ME–0001; A–1–FRL–7881–1]

Approval and Promulgation of Air Quality Implementation Plans; Maine; NO_X Control Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Maine. This revision establishes requirements to reduce emissions of nitrogen oxides (NO_X) emissions from large stationary sources. The intended effect of this action is to approve these requirements into the Maine SIP. EPA is taking this action in accordance with the Clean Air Act (CAA).

DATES: Written comments must be received on or before April 11, 2005.

ADDRESSES: When submitting your comments, include the Regional Material in EDocket (RME) ID Number R01–OAR–2005–ME–0001 by one of the following methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. Agency Web site: *http://docket.epa.gov/rmepub/* Regional Material in EDocket (RME), EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

3. E-mail: *conroy.dave@epa.gov.*

4. Fax: (617) 918–0661.

5. Mail: ''RME ID Number R01–OAR–2005–ME–0001,'' David Conroy, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (mail code CAQ), Boston, MA 02114–2023.

6. Hand Delivery or Courier. Deliver your comments to: David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAQ), Boston, MA 02114–2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Christine Sansevero, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114–2023, (617) 918–1699, *sansevero.christine@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Rules section of this **Federal Register**, EPA is approving the state's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If EPA receives no adverse comments in response to this rule, the Agency anticipates no further activity. If EPA receives adverse comments, the Agency will withdraw the direct final rule and will address all public comments we receive in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: February 18, 2005.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. 05–4708 Filed 3–9–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 194

[FRL–7882–9]

Waste Characterization Program Documents Applicable to Transuranic Radioactive Waste From the Idaho National Engineering and Environmental Laboratory Advanced Mixed Waste Treatment Project for Disposal at the Waste Isolation Pilot Plant

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability; opening of public comment period.

SUMMARY: The Environmental Protection Agency (EPA, or ''we'') is announcing an inspection for the week of February 28, 2005, at the Idaho National Engineering and Environmental Laboratory (INEEL) Advanced Mixed Waste Treatment Project (AMWTP). With this notice, we also announce availability of Department of Energy (DOE) documents in the EPA Docket, and solicit public comments on these documents for a period of 30 days. The following DOE documents, entitled ''INEEL Advanced Mixed Waste Treatment Project Certification Plan for

Contact-Handled Transuranic Waste, MP–TRUW–8.1, Revision 7'' and ''INEEL Advanced Mixed Waste Treatment Project Quality Assurance Project Plan, MP–TRUW–8.2, Revision 3,'' are available for public review in the public dockets listed in the **ADDRESSES** section. EPA will conduct an inspection of waste characterization systems and processes at INEEL/AMWTP to verify that the site can characterize transuranic waste in accordance with EPA's WIPP Compliance Criteria.

DATES: EPA is requesting public comment on the documents. Comments must be received by EPA's official Air Docket on or before April 11, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, by facsimile, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I.B of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Ms. Rajani Joglekar, Office of Radiation and Indoor Air, (202) 343–9462. You can also call EPA's toll-free WIPP Information Line, 1–800–331–WIPP or visit our Web site at *http://www.epa/gov/radiation/wipp.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OAR–2005–0080. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742. These documents are also available for review in paper form at the official EPA Air Docket in Washington, DC, Docket No. A–98–49, Category II–A2, and at the following three EPA WIPP informational docket locations in New Mexico: in Carlsbad at the Municipal Library, Hours: Monday–Thursday, 10 a.m.–9 p.m., Friday–Saturday, 10 a.m.–6 p.m., and Sunday 1 p.m.–5 p.m.; in Albuquerque at the Government Publications Department, Zimmerman Library, University of New Mexico, Hours: vary by semester; and in Santa Fe at the New Mexico State Library, Hours: Monday–Friday, 9 a.m.–5 p.m. As provided in EPA's regulations at 40 CFR Part 2, and in accordance with normal EPA docket procedures, if copies of any docket materials are requested, a reasonable fee may be charged for photocopying.

2. *Electronic Access.* You may access this Federal Register document electronically through the EPA Internet under the ''Federal Register'' listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. However, late comments may be considered if time permits.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that

is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID No. OAR–2005–0080. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *a-and-r-docket@epa.gov,* Attention Docket ID No. OAR–2005–0080. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

2. *By Mail.* Send your comments to: EPA Docket Center (EPA/DC), Air and Radiation Docket, Environmental Protection Agency, EPA West, Mail Code 6102T, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460. Attention Docket ID No. OAR–2005–0080.

3. *By Hand Delivery or Courier.* Deliver your comments to: Air and Radiation Docket, EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. OAR–2005–0080. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Unit I.A.1.

4. *By Facsimile.* Fax your comments to: (202) 566–1741, Attention Docket ID. No. OAR–2005–0080.

C. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

DOE is developing the WIPP near Carlsbad in southeastern New Mexico as a deep geologic repository for disposal of TRU radioactive waste. As defined by the WIPP Land Withdrawal Act (LWA) of 1992 (Pub. L. 102–579), as amended (Pub. L. 104–201), TRU waste consists of materials containing elements having atomic numbers greater than 92 (with half-lives greater than twenty years), in concentrations greater than 100 nanocuries of alpha-emitting TRU isotopes per gram of waste. Much of the existing TRU waste consists of items contaminated during the production of nuclear weapons, such as rags, equipment, tools, and sludges.

On May 13, 1998, EPA announced its final compliance certification decision to the Secretary of Energy (published May 18, 1998, 63 FR 27354). This decision stated that the WIPP will comply with EPA's radioactive waste disposal regulations at 40 CFR Part 191, Subparts B and C.

The final WIPP certification decision includes conditions that (1) prohibit shipment of TRU waste for disposal at WIPP from any site other than the Los Alamos National Laboratory (LANL) until the EPA determines that the site has established and executed a quality assurance program, in accordance with §§ 194.22(a)(2)(i), 194.24(c)(3), and 194.24(c)(5) for waste characterization activities and assumptions (Condition 2 of Appendix A to 40 CFR Part 194); and (2) prohibit shipment of TRU waste for disposal at WIPP from any site other than LANL until the EPA has approved the procedures developed to comply with the waste characterization requirements of § 194.22(c)(4) (Condition 3 of Appendix A to 40 CFR Part 194). The EPA's approval process for waste generator sites is described in § 194.8. As part of EPA's decision-making process, the DOE is required to submit to EPA appropriate documentation of quality assurance and waste characterization programs at each DOE waste generator site seeking approval for shipment of TRU radioactive waste to WIPP. In accordance with § 194.8, EPA has placed this documentation in the official Air Docket in Washington, DC, and informational dockets in the State of New Mexico for public review and comment.

EPA will perform an inspection of the Idaho National Engineering and Environmental Laboratory (INEEL) Advanced Mixed Waste Treatment Project (AMWTP)'s technical program for waste characterization in accordance with Condition 3 of the WIPP certification. We will evaluate the adequacy, implementation, and effectiveness of technical processes related to the AMWTP's TRU waste characterization and certification activities. The elements of 40 CFR 194.8 waste characterization to be inspected are: (1) Acceptable knowledge (AK), nondestructive assay (NDA), and the WIPP Waste Information System (WWIS) for the purpose of confirming processes used to characterize CH TRU debris (compressed) waste; and, (2) the WWIS for characterizing CH TRU solid waste. The inspection is scheduled to take place the week of February 28, 2005.

EPA has placed DOE documents pertinent to the inspection in the public docket described in **ADDRESSES**. These include: (1) INEEL Advanced Mixed Waste Treatment Project Certification Plan for Contact-Handled Transuranic Waste, MP–TRUW–8.1, Revision 7, and (2) INEEL Advanced Mixed Waste Treatment Project Quality Assurance Project Plan, MP–TRUW–8.2, Revision 3. The documents have been placed in Docket A–98–49, Category II–A2, and can also be found online in EPA's EDOCKET OAR–2005–0080. In accordance with 40 CFR 194.8, as amended by the final certification decision, EPA is providing the public 30 days to comment on these documents.

If EPA determines as a result of the inspection that the proposed processes and programs at INEEL/AMWTP adequately control the characterization of transuranic waste, we will notify DOE

by letter and place the letter in the official Air Docket in Washington, DC, as well as in the informational docket locations in New Mexico. A letter of approval will allow DOE to ship transuranic waste characterized by the approved processes from INEEL/AMWTP to the WIPP. The EPA will not make a determination of compliance prior to the inspection or before the 30-day comment period has closed. Information on the certification decision is filed in the official EPA Air Docket, Docket No. A–93–02 and is available for review in Washington, DC, and at three EPA WIPP informational docket locations in New Mexico. The dockets in New Mexico contain only major items from the official Air Docket in Washington, DC, plus those documents added to the official Air Docket since the October 1992 enactment of the WIPP LWA.

Dated: March 3, 2005.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 05–4713 Filed 3–9–05; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[WT Docket No. 04–435; FCC 04–288]

Facilitating the Use of Cellular Telephones and Other Wireless Devices Aboard Airborne Aircraft

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission proposes to replace or relax the ban on the airborne usage of 800 MHz cellular handsets as well as proposes other steps to facilitate the use of wireless handsets and devices, including those used for broadband applications, on airborne aircraft in appropriate circumstances. These actions should benefit consumers by adding to future and existing air-ground communications options that will provide greater access for mobile voice and broadband services while airborne.

DATES: Comments are due on or before April 11, 2005, and reply comments are due May 9, 2005.

FOR FURTHER INFORMATION CONTACT: Guy Benson, Mobility Division, Wireless Telecommunications Bureau, at 202–418–2946 or via e-mail at *Guy.Benson@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Notice of Proposed Rulemaking* (NPRM), FCC 04–288, in WT Docket No. 04–435, adopted December 15, 2004, and released February 15, 2005. The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, 445 12th St., SW., Room CY–A257, Washington, DC 20554. The complete text may be purchased from the Commission's duplicating contractor: Best Copy & Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 800–378–3160, facsimile 202–488–5563, or via e-mail at *fcc@bcpiweb.com.* The full text may also be downloaded at: *http://www.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *Brian.Millin@fcc.gov.*

I. Synopsis of the Notice of Proposed Rulemaking

1. In this *Notice of Proposed Rulemaking*, we propose to replace or relax our ban on airborne usage of 800 MHz cellular handsets as well as propose other steps to facilitate the use of wireless handsets and devices, including those used for broadband applications, on airborne aircraft in appropriate circumstances.

2. In 1991, the Commission adopted its prohibition on using 800 MHz cellular phones while airborne. The rule prevents the airborne use of cellular phones carried onboard by passengers or crew members, as well as use of cellular equipment that might be installed permanently, on both private and commercial aircraft. The ban was adopted in order to guard against the threat of harmful interference from airborne use of cellular phones to terrestrial cellular networks. While Personal Communications Services (PCS) under part 24 and Wireless Communications Services (WCS) under part 27 are not subject to an airborne use prohibition by Commission rules, regulations promulgated by the Federal Aviation Administration (FAA) prohibit the use of all types of mobile telephones, as well as other portable electronic devices (PEDs), on aircraft, unless the aircraft operator has determined that the use of the PED (including mobile/cellular telephones) will not interfere with the aircraft's aviation navigation and communication systems. Thus, while our objective is to relax or remove the Commission's prohibition on the airborne use of cellular telephones, any steps we ultimately take will leave the use of personal electronic devices (including cellular and other wireless handsets) aboard aircraft subject to the rules and policies of the FAA and aircraft operators.

3. We believe that allowing the use of wireless handsets during flight has the potential to benefit homeland security, business, and consumers by adding to future and existing air-ground communications options, including broadband applications. We thus believe that the removal or modification of the Commission's cellular airborne prohibition will benefit public safety and homeland security personnel in need of an air-to-ground communications link in case of an emergency situation. It should also provide enhanced flexibility for service providers to meet the increasing demand for access to mobile telephone and mobile data services and encourage the deployment of innovative and efficient communications technologies and applications. Because of these potential benefits, we tentatively conclude that our current blanket prohibition on airborne cellular use should be modified, and we seek comment on ways to ensure that this can be accomplished without creating the potential for harmful interference to terrestrial cellular networks. We believe that taking action that will lead to more opportunities for service and less regulation for cellular licensees, yet which guards against harmful interference to terrestrial wireless communications, serves the public interest.

4. Accordingly, we believe that section 22.925 of our rules should be replaced with a more flexible policy, and we seek comment on whether the proposals detailed below are appropriate substitutes for the current ban on airborne cellular use.

A. Use of Wireless Handsets Controlled by Onboard Pico Cells

5. One promising technological approach that could support non-interfering airborne use of wireless handsets is to control handset operation through use of airborne ''pico cells.'' In effect, an airborne pico cell is a low power cellular base station installed in the aircraft for the purpose of communicating with (and controlling the operations of) cellular handsets or other cellular devices brought on the aircraft by passengers and crew. Thus, a pico cell is analogous to an in-building wireless system (like those used in large buildings, malls, etc.) for use in the aircraft. The cellular signal travels from the cellular handset to the pico cell,

which then relays the call to the ground via a separate air-to-ground link, *e.g.*, via a satellite band or the 800 MHz Air-Ground band.

6. The pico cell concept has the potential to address concerns of interference from airborne handsets to terrestrial cellular base stations because the pico cell would not use the cellular band to provide the air-ground link between the pico cell and the public switched telephone network or the Internet. Instead, airborne use of cellular frequencies would be limited to communication inside the aircraft between the cellular handset and the pico cell, while the air-ground link would be provided on a non-cellular band that would not threaten interference to terrestrial-based cellular networks. In addition, interference to terrestrial cellular stations would be prevented because the airborne pico cell would minimize handset power levels by instructing handsets to operate at their lowest power setting. In contrast, without a ready pico cell on the aircraft, airborne handsets would normally operate at their highest power setting in an attempt to reach base stations located far away on the ground, potentially causing interference to terrestrial cellular networks. Consequently, we also seek comment on whether we would need to mandate that the pico cell cover a specific set of technologies so that all handsets on board aircraft are controlled by the pico cell.

7. The ability of pico cells to minimize handset power levels thus may enable us to remove or relax section 22.925. Accordingly, we propose to permit cellular handsets to be used in airborne aircraft so long as they are operating under control of a pico cell (installed in accordance with FAA rules) that will instruct the handsets to operate at a sufficiently low power setting so as to not interfere with airborne or terrestrial systems. We ask commenters whether we should adopt technical rules regarding the onboard operation of pico cells using 800 MHz cellular spectrum. For example, if an airborne pico cell were to fail, how should our regulations address the risk of airborne cell phones beginning to search for a terrestrial base station and transmitting at maximum power? We seek comment generally on the viability of this and other potential technological advancements, and we solicit any other ideas or suggestions that commenters believe would increase flexibility for cellular licensees, while avoiding interference to airborne and terrestrial systems. Although we are mainly concerned with potential interference to terrestrial systems, we also recognize the aviation safety concerns that form the basis of the FAA's prohibition on mobile phone use. Consequently, we ask commenters to address whether we should adjust the Commission's permissible out-of-band and spurious emission limits on cellular handsets in order to ensure that aircraft systems are not affected by unwanted emission from cell phones.

8. We also ask that commenters address the issue of who should have rights to operate on 800 MHz cellular spectrum in an airborne pico cell environment. As a threshold matter, we propose that cellular licensees should have the right to operate pico cell systems on their licensed frequencies. Because, however, such pico cell operations would be airborne and transitory, rather than permanently located in any particular licensee's terrestrial service area, and in principle would access a wide range of cellular frequencies, we seek comment on how these rights should be apportioned or shared among such licensees. We also seek comment as to how interference protection would be provided to terrestrial operations. As one example of how this might work, any 800 MHz cellular licensee, regardless of the location of their service area and the flight path of the aircraft, would be authorized to install a pico cell that operates on these frequencies within the aircraft. Under this approach, the cellular licensee would be responsible for the proper operation of the pico cell and would be in a position to remedy any interference to ground systems. Similarly, a group of licensees might operate the pico cell.

9. We also seek comment on whether any parties besides, or in addition to, cellular licensees should have rights to airborne use of this spectrum—either under a secondary market arrangement (*e.g.*, a spectrum lease)—or under a separate authorization. For example, should the owner of a particular aircraft be able to install and operate a pico cell without leasing spectrum usage rights or partnering with a cellular carrier? Should a third party, other than the aircraft operator, be authorized to install and operate the pico cell? If we adopted a third party approach, what should the parameters or extent of such third party rights be, and what interference protection obligations would such third parties have to terrestrial cellular licensees? Should such rights be granted solely on a secondary basis to that of terrestrial cellular systems in order to ensure that terrestrial cellular systems are protected from interference?

10. We also ask that commenters address whether pico cells should be individually licensed or subject to some form of ''blanket'' license or individual registration. Under any of these pico cell scenarios, we stress that protecting terrestrial cellular systems from harmful interference remains a paramount concern. We also believe that to ensure that terrestrial cellular systems can obtain prompt relief in the event of harmful interference from airborne operations, our rules should provide for clear identification of the particular entity or entities responsible for airborne pico cell operations, as well as for complying with other Commission rules and policies relating to airborne use of cellular frequencies.

11. In addition, we seek comment on whether the pico cell proposal outlined above should apply to part 90 operations, or some subset of part 90 consumer equipment (such as consumer handsets operated by SMR licensees), which is subject to a separate airborne limitation for part 90 land mobile (including SMR) handsets that impacts operation of many consumer devices such as those operated by Nextel. Although the current part 90 technical and operational limitations are more permissive than the current 800 MHz cellular ban, our proposal would represent additional flexibility for airborne part 90 operation.

12. Similarly, we seek comment whether, and the extent to which, our pico cell proposal should apply to part 24 and part 27 services. In this connection, we note that many telephones today are dual band phones, capable of operating in both cellular and PCS frequencies. We ask that commenters address whether this should affect our decision here. Although there is currently no Commission limitation on operation of part 24 PCS or part 27 WCS devices in airborne aircraft, they are subject to FAA restrictions on PEDs, and as a result, the airborne use of part 24 and part 27 devices, as well as the effect of such use on terrestrial systems, have generally not been at issue. We seek comment, however, on whether it would be beneficial to adopt rules for pico cell operations in part 24 and part 27 bands in the event that the FAA modifies its policies. Keeping in mind our goals of increased flexibility and interference-free operations, would adopting such rules unnecessarily reduce the flexibility afforded to licensees in these bands, or would it provide a useful framework for the development of airborne applications in these bands to the extent technical and business considerations dictate?

B. Other Airborne Uses of 800 MHz Cellular Spectrum

13. We also seek comment on ways that the 800 MHz cellular spectrum might be used as a communications pipe between airborne aircraft and the ground. We believe that it is possible to achieve the goal of increasing flexibility for cellular licensees without exposing terrestrial-based cellular networks to harmful interference. In this connection, we note that cellular infrastructure has changed greatly since 1991 when the airborne cellular use ban was first adopted and that promising technical innovations have occurred in the areas of power control, filter design, and antenna design that may assist the industry in resolving potential interference without a Commission-mandated ban on airborne use. Therefore, we seek comment on the possibility of relying on a long-term, industry-initiated solution to govern airborne use.

14. More particularly, we seek comment on whether the prohibition on airborne cellular use could be replaced by an industry-developed standard that would allow 800 MHz cellular licensees to offer airborne cellular service in accordance with a set of technical and operational limitations widely agreed to by the affected licensees. We believe that licensees have a strong incentive to develop such standards because of the flexibility in deployment and service offerings that airborne services could bring. We also note that organizations such as the Telecommunications Industry Association and the Electronic Industries Alliance have led, and continue to lead, successful efforts to develop technical and operational standards for introduction of new and additional technologies and services into already occupied spectrum by industry consensus, as opposed to government mandate. Should such consensus be reached with respect to airborne cellular operations, we would independently evaluate the standard and modify our rules and policies regarding airborne cellular use accordingly. Commenters should discuss the difficulties, as well as any solutions, to this approach. Commenters should also offer any other suggestions as to how the industry, rather than the Commission, can develop a regime that enables interference-free airborne cellular use.

15. In addition to the foregoing, we request comment on whether we should allow any cellular licensee to provide cellular service to airborne units on a secondary basis, subject to a set of conservative technical limitations. We believe that the potential for harmful interference to terrestrial networks can be successfully managed by a combination of technical limitations, including low power operation, use of directional or ''smart'' antennas, and diversity in antenna polarization. In this connection, we believe the record demonstrates that airborne transmissions at or below 0 dBm (1 milliWatt) power to the airborne antenna input are generally undetectable by ordinary cellular terrestrial base stations under all circumstances. We thus believe that the cellular service proposed here should be subject to specific, conservative technical criteria so that the transmitter power at the input to the airborne antenna is limited to 0 dBm (1 milliWatt). Although such a conservative power limit is sure to prevent harmful interference to terrestrial base stations, it may not be sufficient to facilitate real-world air-to-ground communications. Therefore, we propose that if directional or smart antennas, or diversity in antenna polarization is used, the 0 dBm limit may be increased by the amount of isolation provided by such methods.

16. We seek comment on how to quantify the effect of different types of isolation. For example, if cross-polarization isolation is employed, how much greater than 0 dBm should be allowed? Are there quantifiable factors already being employed in the industry? Or, do commenters believe that any isolation factor should be determined on a case-by-case basis? If so, commenters are requested to suggest any guiding principles that would aid our analysis and expedite consideration and agreement upon such isolation factors. In seeking to optimize the secondary use contemplated under this proposal, we also ask that commenters address whether we should limit the amount of cellular spectrum that may be used for secondary air-to-ground operations, as well as whether the number of secondary users should be limited. We note that this proposal is currently limited to 800 MHz cellular spectrum because the record in this proceeding has focused on the 800 MHz band. If commenters believe that it is appropriate to include other spectrum bands and services, they should provide technical data in support.

17. We believe that this approach may increase the opportunities for carriers to offer, and the general public to receive, airborne cellular services and thereby result in concomitant benefits for both licensees and consumers. We seek comment on this proposal and ask whether there are any other technical or operational rules that we might adopt that will further the goal of enabling airborne cellular service on a secondary basis, as described here, that will not cause harmful interference to cellular terrestrial stations and/or users.

II. Procedural Matters

A. Initial Regulatory Flexibility Analysis

18. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *Notice of Proposed Rulemaking.* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Notice of Proposed Rulemaking* provided in paragraph 27 of the item. The Commission will send a copy of the *Notice of Proposed Rulemaking*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *Notice of Proposed Rulemaking* and IRFA (or summaries thereof) will be published in the **Federal Register**.

1. Need for, and Objectives of, the Proposed Rules

19. In this *Notice of Proposed Rulemaking*, we propose to replace or relax the ban on airborne usage of 800 MHz cellular handsets as well as propose other steps to facilitate the use of wireless handsets and devices, including those used for broadband applications, on airborne aircraft in appropriate circumstances. Section 22.925 of the Commission's rules currently prohibits the airborne use of 800 MHz cellular telephones, including the use of such phones on commercial and private aircraft. We believe that allowing controlled use of cellular handsets and other wireless devices in airborne aircraft will promote homeland security and will benefit consumers by adding to future and existing air-ground communications options that will provide greater access for mobile voice and broadband services during flight.

20. In particular, this *Notice of Proposed Rulemaking* proposes to permit the airborne operation of standard, ''off the shelf'' wireless handsets so long as the handsets are operating at their lowest power setting under control of a ''pico cell'' located on the aircraft. It also seeks comment on ways that the 800 MHz cellular spectrum could be used to provide a

communications ''pipe'' between airborne aircraft and the ground. In this connection, we seek comment on whether the prohibition on airborne cellular use could be replaced by an industry-developed standard that would guard against harmful interference to airborne and terrestrial systems through appropriate technical and operational limitations. Finally, this *Notice of Proposed Rulemaking* seeks comment on whether to amend our rules to allow cellular licensees to provide service on a secondary basis to airborne units subject to technical limitations aimed at preventing harmful interference to airborne and terrestrial cellular systems.

2. Legal Basis

21. This action is taken under sections 1, 4(i), 11, and 303(r) and (y), 308, 309, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 161, 303(r), (y), 308, 309, and 332.

3. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

22. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

23. In this section, we further describe and estimate the number of small entity licensees and regulatees that may be affected by our action. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be the data that the Commission publishes in its Trends in Telephone Service report. The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired Telecommunications Carriers, Paging, and Cellular and Other Wireless Telecommunications. Under these categories, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, we discuss the total estimated numbers of small businesses that might be affected by our actions.

24. *Cellular Licensees.* The SBA has developed a small business size standard for wireless firms within the broad economic census category ''Cellular and Other Wireless Telecommunications.'' Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category Cellular and Other Wireless Telecommunications firms, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this category and size standard, the great majority of firms can be considered small. According to the most recent Trends in Telephone Service data, 719 carriers reported that they were engaged in the provision of cellular service, personal communications service, or specialized mobile radio telephony services, which are placed together in the data. We have estimated that 294 of these are small, under the SBA small business size standard.

25. *Lower 700 MHz Band Licenses.* We adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. A very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. Additionally, the lower 700 MHz Service has a third category of small business status that may be claimed for Metropolitan/Rural Service Area (MSA/RSA) licenses. The third category is entrepreneur, which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these small size standards. An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six EAGs) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses. A second auction commenced on May 28, 2003, and closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 CMA licenses. Seventeen winning bidders claimed small or very small business status and won sixty licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.

26. *Upper 700 MHz Band Licenses.* The Commission released a *Report and Order* authorizing service in the upper 700 MHz band. This auction, previously scheduled for January 13, 2003, has been postponed.

27. *Broadband Personal Communications Service* (PCS). The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These standards defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses. Subsequent events, concerning Auction 305, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In addition, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. In addition, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

28. *Narrowband PCS.* The Commission held an auction for Narrowband PCS licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second commenced on October 26, 1994 and closed on November 8, 1994. For purposes of the first two Narrowband PCS auctions, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses. To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order.* A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards. A third auction commenced on October 3, 2001 and closed on October 16, 2001. Here, five bidders won 317 (MTA and nationwide) licenses. Three of these claimed status as a small or very small entity and won 311 licenses. A fourth auction commenced on September 24, 2003 and closed on September 29, 2003. Here, four bidders 48 licenses. Four of these claimed status as a very small entity and won 48 licenses. Finally, a fifth auction commenced on September 24, 2003 and closed on September 25, 2003. Here, one bidder won five licenses. That bidder claimed status as a very small entity.

29. *Specialized Mobile Radio* (SMR). The Commission awards ''small entity'' bidding credits in auctions for SMR geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years. The Commission awards ''very small entity'' bidding credits to firms that had revenues of no more than $3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 900 MHz Service. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

30. The auction of the 1,050 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were sold. Of the 22 winning bidders, 19 claimed ''small business'' status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

31. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is established by the SBA.

32. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions. The FCC auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity. An auction for one license in the 1670–1674 MHz band commenced on April 30, 2003 and closed the same day. One license was awarded. The winning bidder was not a small entity.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

33. The *Notice of Proposed Rulemaking* does not propose any reporting, recordkeeping or compliance requirements. However, we seek comment on what, if any, requirements may arise as a result of our discussion in the *Notice of Proposed Rulemaking.*

5. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

34.The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

35. Regarding our proposal to allow pico cells to control 800 MHz cellular telephones while airborne, we anticipate no adverse impact on small businesses. Currently, cellular telephone use is prohibited by section 22.925 of our rules. Relaxing or removing this restriction will generally result in increased opportunities for all sorts of businesses, including small businesses.

36. More specifically, we propose to grant cellular licensees authority to operate pico cell systems on their licensed frequencies. In the event that we ultimately determine that eligibility should be limited solely to cellular licensees, we recognize that other entities, including small business entities, would not be able to take advantage of the increased market opportunities for air-to-ground voice service. Cellular small business licensees, however, would benefit from increased flexibility and increased

ability to offer services. As an alternative approach, we seek comment in this *NPRM* as to whether the rights to operate such systems should be available to other (non-cellular) entities. Should we determine that the public interest would be served by opening up eligibility, small businesses that are not cellular licensees could benefit from increased market opportunities.

37. Similarly, we seek comment on whether our pico cell proposal should apply to non-cellular operations under parts 24 (PCS), 27 (WCS), and 90 (SMR and other land mobile radio) of our rules. Regarding licensees regulated under parts 24 and 27, there is currently no Commission rule restricting airborne use of wireless handsets. Consequently, on one hand, if we were to include these services in our proposal, it could be construed that the flexibility of all licensees, including small businesses, would be reduced. On the other hand, mobile units covered under these licenses are currently prohibited by the FAA to be used in aircraft while airborne. We also note that such devices may not be able to connect with ground stations above certain altitudes due to the great distances. Accordingly, to the extent that this proceeding leads to the permissible and viable airborne operation of wireless devices using part 24 and part 27 spectrum, we believe all entities could benefit. Regarding land mobile licensees under part 90, our rules limit the airborne use of mobile units. Our proposal to relax these limitations will, therefore, result in increased opportunities for both large and small businesses.

38. We also seek comment on the practicality of an industry-initiated agreement that sets forth technical and operational standards that would allow cellular carriers to provide air-to-ground services while ensuring no harmful interference to terrestrial cellular systems. We believe that no adverse impact on small entities would result from such an industry consensus. To the contrary, small businesses will be able to participate in the industry-initiated process and take advantage of increased opportunities to offer service to aircraft.

39. Finally, regarding our decision to seek comment on whether cellular licensees should be able to offer service to airborne wireless units on a secondary basis, subject to conservative technical and operational rules, we anticipate no adverse impact on small entities. In fact, were we to ultimately adopt rules contemplated by this policy, small businesses would benefit from increased opportunities and flexibility to serve their clients.

6. Federal Rules That May Duplicate, Overlap or Conflict With the Proposed Rules

40. 14 CFR 91.21, 121.306, 125.204, and 135.144.

B. Initial Paperwork Reduction Act of 1995 Analysis

41. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

42. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before April 11, 2005, and reply comments are due May 9, 2005. Comments and reply comments should be filed in WT Docket No. 04–435. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

43. Comments may be filed either by filing electronically, such as by using the Commission's Electronic Comment Filing System (ECFS), or by filing paper copies. Parties are strongly urged to file their comments using ECFS (given recent changes in the Commission's mail delivery system). Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Only one copy of an electronic submission must be filed. In completing the transmittal screen, the electronic filer should include its full name, Postal Service mailing address, and the applicable docket or rulemaking number, WT Docket No. 04–435. Parties also may submit comments electronically by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

44. Parties who choose to file by paper may submit such filings by hand or messenger delivery, by U.S. Postal Service mail (First Class, Priority, or Express Mail), or by commercial overnight courier. Parties must file an original and four copies of each filing in WT Docket No. 04–435. Parties that want each Commissioner to receive a personal copy of their comments must file an original plus nine copies. If paper filings are hand-delivered or messenger-delivered for the Commission's Secretary, they must be delivered to the Commission's contractor at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002–4913. To receive an official ''Office of the Secretary'' date stamp, documents must be addressed to Marlene H. Dortch, Secretary, Federal Communications Commission. (The filing hours at this facility are 8 a.m. to 7 p.m.) If paper filings are submitted by mail though the U.S. Postal Service (First Class mail, Priority Mail, and Express Mail), they must be sent to the Commission's Secretary, Marlene H. Dortch, Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554. If paper filings are submitted by commercial overnight courier (*i.e.*, by overnight delivery other than through the U.S. Postal Service), such as by Federal Express or United Parcel Service, they must be sent to the Commission's Secretary, Marlene H. Dortch, Federal Communications Commission, Office of the Secretary, 9300 East Hampton Drive, Capitol Heights, MD 20743. (The filing hours at this facility are 8 a.m. to 5:30 p.m.)

45. Parties may also file with the Commission some form of electronic media submission (*e.g.*, diskettes, CDs, tapes, etc.) as part of their filings. In order to avoid possible adverse affects on such media submissions (potentially caused by irradiation techniques used to ensure that mail is not contaminated), the Commission advises that they should not be sent through the U.S. Postal Service. Hand-delivered or messenger-delivered electronic media submissions should be delivered to the Commission's contractor at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002–4913. Electronic media sent by commercial overnight courier should be sent to the Commission's Secretary, Marlene H. Dortch, Federal Communications Commission, Office of the Secretary, 9300 East Hampton Drive, Capitol Heights, MD 20743.

46. Regardless of whether parties choose to file electronically or by paper, they should also send one copy of any documents filed, either by paper or by e-mail, to each of the following: (1) Best Copy & Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, facsimile (202) 488–5563, or e-mail at *http://www.fcc@bcpiweb.com*; and (2) Guy Benson, Mobility Division, Wireless Telecommunications Bureau, 445 12th

Street, SW., Washington, DC 20554, or e-mail at *Guy.Benson@fcc.gov.*

47. Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Information Center, Federal Communications Commission, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. These documents also will be available electronically at the Commission's Disabilities Issues Task Force Web site, *http://www.fcc.gov/dtf,* and from the Commission's Electronic Comment Filing System. Documents are available electronically in ASCII text, Word 97, and Adobe Acrobat. Copies of filings in this proceeding may be obtained from Best Copy & Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160, facsimile (202) 488–5563, or via e-mail at *http://www.fcc@bcpiweb.com.* This document is also available in alternative formats (computer diskette, large print, audio cassette, and Braille). Persons who need documents in such formats may contact Brian Millin at (202) 418–7426, TTY (202) 418–7365, *Brian.Millin@fcc.gov,* or send an e-mail to *access@fcc.gov.*

C. Ex Parte Rules Regarding the NRPM—Permit-But-Disclose Comment Proceeding

48. With regard to the *NRPM,* this is a permit-but-disclose notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. *See generally* 47 CFR 1.1202, 1.1203, and 1.1206.

III. Ordering Clauses

49. Pursuant to the authority contained in sections 1, 4(i), 11, and 303(r) and (y), 308, 309, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 161, 303(r), (y), 308, 309, and 332, this Notice of Proposed Rulemaking is hereby *adopted.*

50. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this *Notice of Proposed Rulemaking,* including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 22

Communications common carriers, Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 22 as follows:

PART 22—PUBLIC MOBILE SERVICES

1. The authority citation for part 22 continues to read as follows:

Authority: 47 U.S.C. 154, 222, 303, 309, and 332.

2. Section 22.925 is revised to read as follows:

§ 22.925 Prohibition on airborne operation of cellular telephones.

(a) Cellular devices installed in or carried aboard airplanes, balloons or any other type of aircraft must not be operated and must be turned off while such aircraft are airborne (not touching the ground) unless as specified in paragraph (b) of this section. Unless measures are implemented aboard aircraft in accordance with paragraph (b), the following notice must be posted on or near each cellular device installed in any aircraft:

''The use of cellular telephones while this aircraft is airborne is prohibited by FCC rules, and the violation of this rule could result in suspension of service and/or a fine. The use of cellular telephones on this aircraft is also subject to FAA regulations.''

(b) Devices using 800 MHz cellular frequencies may be operated on airborne aircraft only if such devices are operated in a manner that will not cause interference to terrestrial cellular systems. Airborne operation of cellular devices is permissible only if operation of these devices is under the control of onboard equipment specifically designed to mitigate such interference.

Note to § 22.925: The FAA independently prohibits the use of personal electronic devices, including cellular devices, unless an aircraft operator has determined that use of those devices does not cause interference to an aircraft's aviation navigation and communications systems.

[FR Doc. 05–4725 Filed 3–9–05; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 050303056–5056–01; I.D. 020205F]

RIN 0648–AT07

Atlantic Highly Migratory Species; Atlantic Commercial Shark Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would establish the second and third trimester season quotas for large coastal sharks (LCS), small coastal sharks (SCS), pelagic, blue, and porbeagle sharks based on over- or underharvests from the 2004 second semi-annual season. In addition, this rule proposes the opening and closing dates for the LCS fishery based on adjustments to the trimester quotas. This action could affect all commercial fishermen in the Atlantic commercial shark fishery.

DATES: Written comments will be accepted until 5 p.m. on March 25, 2005.

NMFS will hold one public hearing to receive comments from fishery participants and other members of the public regarding the proposed shark regulations. The hearing date is Monday, March 21, 2005, from 2:45–3:45 p.m.

The Atlantic commercial shark fishing season proposed opening and closure dates and quotas are provided in Table 1 under **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The hearing location is the Holiday Inn, 8777 Georgia Avenue, Silver Spring, MD 20910.

Written comments on the proposed rule may be submitted to Christopher Rogers, Chief, Highly Migratory Species Management Division via:

• E-mail: *SF1.020205F@noaa.gov*.

• Mail: 1315 East-West Highway, Silver Spring, MD 20910. Please mark the outside of the envelope ''Comments on Proposed Rule for 2nd and 3rd Trimester Season Lengths and Quotas.''

• Fax: 301–713–1917.

• Federal e-Rulemaking portal: *http://www.regulations.gov*. Include in the subject line the following identifier: I.D. 020205F.

FOR FURTHER INFORMATION CONTACT: Chris Rilling, Karyl Brewster-Geisz, or

Mike Clark by phone: 301–713–2347 or by fax: 301–713–1917.

SUPPLEMENTARY INFORMATION:

Proposed Opening and Closure Dates and Quotas

TABLE 1—PROPOSED OPENING AND CLOSURE DATES AND QUOTAS

Species Group	Region	Opening Date	Closure Date	Quota
Second Trimester Season				
Large Coastal Sharks	Gulf of Mexico	August 1, 2005	August 31, 2005 11:30 p.m. local time	148 mt dw (326,280 lb dw)
	South Atlantic	July 1, 2005		182 mt dw (401,237 lb dw)
	North Atlantic	July 15, 2005		65.2 mt dw (143,739 lb dw)
Small Coastal Sharks	Gulf of Mexico	May 1, 2005	To be determined, as necessary	30.5 mt dw (67,240 lb dw)
	South Atlantic			281.3 mt dw (620,153 lb dw)
	North Atlantic			23 mt dw (50,706 dw)
Blue sharks	No regional quotas	May 1, 2005	To be determined, as necessary	91 mt dw (200,619 lb dw)
Porbeagle sharks				30.7 mt dw (67,681 lb dw)
Pelagic sharks other than blue or porbeagle				162.7 mt dw (358,688 lb dw)
Third Trimester Season				
Large Coastal Sharks	Gulf of Mexico	September 1, 2005	October 31, 2005 11:30 p.m. local time	167.7 mt dw (369,711 lb dw)
	South Atlantic		December 15, 2005 11:30 p.m. local time	187.5 mt dw (413,362 lb dw)
	North Atlantic		September 14, 2005 11:30 p.m. local time	4.8 mt dw (10,582 lb dw)
Small Coastal Sharks	Gulf of Mexico	September 1, 2005	To be determined, as necessary	31.7 mt dw (69,885 lb dw)
	South Atlantic			201.1 mt dw (443,345 lb dw)
	North Atlantic			15.9 mt dw (35,053 lb dw)
Blue sharks	No regional quotas	September 1, 2005	To be determined, as necessary	91 mt dw (200,619 lb dw)
Porbeagle sharks				30.7 mt dw (67,681 lb dw)
Pelagic sharks				162.7 mt dw (358,688 lb dw)

Background

The Atlantic shark fishery is managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Fisheries Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP), finalized in 1999, and Amendment 1 to the HMS FMP, finalized in 2003, are implemented by regulations at 50 CFR part 635.

On December 24, 2003, NMFS published a final rule (68 FR 74746) for Amendment 1 to the HMS FMP that established, among other things, the 2004 annual landings quota for LCS at 1,017 metric tons (mt) dressed weight (dw) and the 2004 annual landings quota for SCS at 454 mt dw. The final rule also established regional LCS and SCS quotas for the commercial shark fishery in the Gulf of Mexico (Texas to the West coast of Florida), South Atlantic (East coast of Florida to North Carolina and the Caribbean), and North

Atlantic (Virginia to Maine). The quota for LCS was split among the three regions based upon historic landings.

On November 30, 2004, NMFS published a final rule (69 FR 69537) that adjusted the 2005 regional quotas for LCS and SCS based on updated landings information, divided the quotas among the three trimester seasons, established a method of accounting for over- or underharvests in the transition from semi-annual to trimester seasons, and implemented a new process for notifying participants of season opening and closing dates and quotas.

The 2004 final rule divided the LCS quota among the three regions as follows: 52 percent to the Gulf of Mexico, 41 percent to the South Atlantic, and 7 percent to the North Atlantic. The SCS quota was split among the three regions as follows: 10 percent to the Gulf of Mexico, 88 percent to the South Atlantic, and 2 percent to the North Atlantic. The regional quotas for LCS and SCS were divided equally between the trimester seasons in the South Atlantic and the Gulf of Mexico, and according to historical landings in the North Atlantic. The quotas were divided in this manner because sharks are available throughout much of the year in the Gulf of Mexico and South Atlantic regions, but primarily during the summer months in the North Atlantic region. Dividing the quota according to historical landings in the North Atlantic provided that region with a better opportunity to harvest its regional quota.

The final rule also established a method of dividing any over- or underharvests from the 2004 first semi-annual season equally between the 2005 first and second trimester seasons, and any over- or underharvest from the 2004 second semi-annual season equally between the 2005 second and third trimester seasons. This was done, in part, to make a larger portion of the quota available to fishermen during the second and third trimester seasons when the time/area closure off North Carolina will no longer be in effect.

Consistent with the Administrative Procedure Act (APA), the final rule established a process of issuing a proposed and final rule for notification of season lengths and quotas to facilitate public comment. This proposed rule serves as notification of proposed season lengths and quotas pursuant to 50 CFR 635.27(b)(1)(iii). This action would not change the 2005 base landings quota or the 2005 regional quotas established in the November 30, 2004, final rule.

Annual Landings Quotas

Any of the proposed quotas may change depending on any updates to the reported landings from the 2004 second semi-annual season. Per Amendment 1 to the HMS FMP, the 2005 annual base landings quotas for LCS and SCS are 1,017 mt dw (2,242,078 lbs dw) for LCS and 454 mt dw (1,000,888.4 lbs dw) for SCS. The 2005 quota levels for pelagic, blue, and porbeagle sharks are 488 mt dw (1,075,844.8 lbs dw), 273 mt dw (601,855.8 lbs dw), and 92 mt dw (202,823.2 lbs dw), respectively. This rule does not propose to change any of these overall base landings quotas.

As of February 1, 2005, the overall 2004 second semi-annual season quotas for LCS and SCS had not been exceeded. Reported landings of LCS were at 89 percent (618.2 mt dw) of the LCS semi-annual quota, and SCS landings were at 30 percent (77.1 mt dw) of the overall SCS semi-annual quota. The Gulf of Mexico and North Atlantic regions experienced overharvests of 6 percent (16.9 mt dw) and 5 percent (1.85 mt dw) of their regional LCS quotas, respectively, whereas the South Atlantic region experienced an underharvest of 26 percent (97.1 mt dw) of its regional LCS quota. The Gulf of Mexico and South Atlantic experienced an underharvest of 62 percent (33.2 mt dw) and 65 percent (138.7 mt dw) of their regional SCS quotas, respectively. The North Atlantic reported no landings of SCS during the second semi- annual season. As described below, the regional quotas will be adjusted based on these over- or underharvests.

Regional Landings Quotas Percentages for LCS and SCS

Consistent with 50 CFR 635.27(b)(1)(iii), the annual LCS quota (1,017 mt dw) is split among the regions as follows: 52 percent to the Gulf of Mexico, 41 percent to the South Atlantic, and 7 percent to the North Atlantic.

Also consistent with 50 CFR 635.27(b)(1)(vi)(3), the LCS quota for the Gulf of Mexico and the South Atlantic regions is further split equally (33.3 percent/season) between the three trimester fishing seasons, and the quota for the North Atlantic is further split according to historical landings of 4, 88, and 8 percent for the first, second, and third trimester seasons, respectively.

Consistent with 50 CFR 635.27(b)(1)(iv), the annual SCS quota (454 mt dw) is split among the regions as follows: 10 percent to the Gulf of Mexico, 87 percent to the South Atlantic, and 3 percent to the North Atlantic.

Also consistent with 50 CFR 635.27(b)(1)(vi)(3), the SCS quota for the Gulf of Mexico and the South Atlantic region is further split equally (33.3 percent/season) between the three trimester fishing seasons, and the quota for the North Atlantic is further split according to historical landings of 1, 9, and 90 percent for the first, second, and third trimester seasons, respectively.

Due to the transition between semi-annual and trimester seasons, and consistent with the November 30, 2004, final rule, any over- or underharvest in a given region for the 2004 second semi-annual season will be divided equally between that region's quotas for the second and third 2005 trimester seasons. Additionally, one half of the over- or underharvest from the 2004 first semi-annual season will be carried over to the second 2005 trimester season.

Gulf of Mexico Regional Landings Quotas

In 2004, preliminary data indicate that for LCS, the Gulf of Mexico had an overharvest of 39.7 mt dw in the first semi-annual season, and an overharvest of 16.9 mt dw in the second semi-annual season. Thus, the total amount of quota removed from the second trimester season is 28.3 mt dw (39.7/2 +16.9/2), and the total amount of LCS quota removed from the third trimester season is 8.45 mt dw (16.9/2). As a result, the Gulf of Mexico LCS quota for the 2005 second trimester season is proposed to be 147.8 mt dw (1,017*0.52*0.333 −28.3), and the quota for the 2005 third trimester season is proposed as 167.7 mt dw (1,017*0.52*0.333 −8.45).

In 2004, preliminary data indicate that for SCS, the Gulf of Mexico had an overharvest of 2.4 mt dw in the first semi-annual season, and an underharvest of 33.2 mt dw in the second semi-annual season. Thus, the total amount of quota carried over into the second trimester season is 15.4 mt dw (33.2/2 −2.4/2), and the total amount of quota carried over into the third trimester season is 16.6 mt dw (33.2/2). As a result, the Gulf of Mexico SCS quota for the 2005 second trimester season is proposed to be 30.5 mt dw (454*0.10*0.333 +15.4), and the quota for the 2005 third trimester season is proposed as 31.7 mt dw (454*0.10*0.333 +16.6).

South Atlantic Regional Landings Quotas

In 2004, preliminary data indicate that for LCS, the South Atlantic had an overharvest of 11.2 mt dw in the first semi-annual season, and an underharvest of 97.1 mt dw in the

second semi-annual season. Thus, the total amount of quota carried over to the second trimester season is 43.0 mt dw (97.1/2–11.2/2), and the total amount of quota carried over into the third trimester season is 48.6 mt dw (97.1/2). As a result, the South Atlantic LCS quota for the 2005 second trimester season is proposed to be 182.0 mt dw (1,017*0.41*0.333 +43.0), and the quota for the 2005 third trimester season is proposed as 187.5 mt dw (1,017*0.41*0.333 +48.6).

In 2004, preliminary data indicate that for SCS, the South Atlantic had an underharvest of 161.0 mt dw in the first semi-annual season, and an underharvest of 138.7 mt dw in the second semi-annual season. Thus, the total amount of quota carried over into the second trimester season is 149.8 mt dw (161.0/2 +138.7/2), and the total amount of quota carried over into the third trimester season is 69.3 mt dw (138.7/2). As a result, the South Atlantic SCS quota for the 2005 second trimester season is proposed to be 281.3 mt dw (454*0.87*0.333 +149.8), and the quota for the 2005 third trimester season is proposed to be 200.8 mt dw (454*0.87*0.333 +69.3).

North Atlantic Regional Landings Quotas

In 2004, preliminary data indicate that for LCS, the North Atlantic had an underharvest of 7.0 mt dw in the first semi-annual season, and an overharvest of 1.85 mt dw in the second semi-annual season. Thus the total amount of quota carried over into the second trimester season is 2.6 mt dw (7.0/2 −1.85/2), and the total amount of quota removed from the third trimester season is 0.93 mt dw (1.85/2). As a result, the North Atlantic LCS quota for the 2005 second trimester season is proposed to be 65.2 mt dw (1,017*0.07*0.88 +2.6), and the quota for the 2005 third trimester season is proposed as 4.76 mt dw (1,017*0.07*0.08 −.93).

In 2004, preliminary data indicate that for SCS, the North Atlantic had an underharvest of 36.1 mt dw in the first semi-annual season, and an underharvest of 7.4 mt dw in the second semi-annual season. Thus, the total amount of quota carried over into the second trimester season is 21.8 mt dw (36.1/2 +7.4/2), and the total amount of quota carried over into the third trimester season is 3.7 mt dw (7.4/2). As a result, the North Atlantic SCS quota for the 2005 second trimester season is proposed to be 23.0 mt dw (454*0.03*0.09 +21.8), and the quota for the 2005 third trimester season is proposed as 15.9 mt dw (454*0.03*0.90 +3.7).

Pelagic Shark Quotas

The 2005 annual quotas for pelagic, blue, and porbeagle sharks are 488 mt dw (1,075,844.8 lbs dw), 273 mt dw (601,855.8 lbs dw), and 92 mt dw (202,823.2 lbs dw), respectively. These are the same quotas that were established in the HMS FMP. As of February 2005, approximately 57.3 mt dw had been reported landed in the second 2004 semiannual fishing season in total for pelagic, blue, and porbeagle sharks combined. Thus, the pelagic shark quota does not need to be reduced consistent with the current regulations 50 CFR 635.27(b)(1)(iv). The 2005 second and third trimester quotas for pelagic, blue, and porbeagle sharks are proposed to be 162.6 mt dw (358,688.4 lbs dw), 91 mt dw (200,618.6 lbs dw), and 30.7 mt dw (67,681.2 lbs dw), respectively.

Proposed Fishing Season Notification for the Second Season

The second trimester fishing season of the 2005 fishing year for SCS, pelagic sharks, blue sharks, and porbeagle sharks in the northwestern Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, is proposed to open on May 1, 2005, at 11:30 a.m. local time. When quotas are projected to be reached for the SCS, pelagic, blue, or porbeagle shark fisheries, the Assistant Administrator (AA) will file notification of closures at the Office of the Federal Register at least 14 days before the effective date, as consistent with 50 CFR 635.28(b)(2).

The second trimester fishing season of the 2005 fishing year for LCS is proposed to open on July 1, 2005, in the South Atlantic region, on July 15, 2005, in the North Atlantic region, and on August 1, 2005, in the Gulf of Mexico region. NMFS is proposing to close the second trimester season LCS fishery in all regions on August 31, 2005, at 11:30 p.m. local time.

NMFS is proposing to delay the start of the second season for LCS to reduce the likelihood of interactions with pregnant female sharks that may be about to give birth. Delaying the start of the season will also allow the second and third trimester seasons to run consecutively. This will prevent the need for a closure of the LCS fishery between the second and third trimester seasons and should help minimize disruption to fishery participants in the transition from semi-annual to trimester seasons.

To estimate the LCS fishery opening and closing dates for the second and third trimester seasons, NMFS calculated the average catch rates from July and August combined, as well as catch rates from August alone for each of the regions during the second semi-annual season in recent years (2000–2004), and then took the average of the two estimates to determine the appropriate season lengths. NMFS used this precautionary approach of averaging catch rates from July and August because of the potential for higher effort in August than has been observed in the past, and to reduce the likelihood of an overharvest. These average catch rates were used to estimate the amount of available quota that would likely be taken by the end of each dealer reporting period.

Consistent with 50 CFR 635(b)(1)(vi), any over- or underharvests in one region will result in an equivalent increase or decrease in the following year's quota for that region.

Because state landings during a Federal closure are counted against the quota, NMFS also calculated the average amount of quota reported received during the Federal closure dates of the years used to estimate catch rates.

Pursuant to 50 CFR 635.5(b)(1), shark dealers must report any sharks received twice a month. More specifically, sharks received between the first and 15th of every month must be reported to NMFS by the 25th of that same month and those received between the 16th and the end of the month must be reported to NMFS by the 10th of the following month. Thus, in order to simplify dealer reporting and aid in managing the fishery, NMFS proposes to open and close the Federal LCS fishery on either the 15th or the end of any given month.

Based on the average July and August LCS catch rates combined in recent years in the Gulf of Mexico region, approximately 54 percent of the available second trimester LCS quota (148.0 mt dw) would likely be taken in 2 weeks and 108 percent of the available LCS quota would likely be taken in 4 weeks. Dealer data also indicate that, on average, approximately 6.5 mt dw of LCS has been reported received by dealers during a Federal closure. This is approximately 4 percent of the proposed available quota. If catch rates in 2005 are similar to the average catch rates from 2000 to 2004, 58 percent (54 + 4 percent) of the second trimester quota could be caught in 2 weeks, and 113 percent (109 + 4) of the quota could be caught in 4 weeks.

Based on average LCS catch rates from August in recent years in the Gulf of Mexico region, approximately 37 percent of the available second trimester LCS quota would likely be taken in 2 weeks and 73 percent of the available second trimester LCS quota would

likely be taken in 4 weeks. If catch rates in 2005 are similar to the average catch rates from 2000 to 2004, 41 percent (37 + 4) of the second trimester quota could be caught in 2 weeks and 77 percent (73 percent + 4 percent) of the quota could be caught in 4 weeks. Taking into account the average of the two catch rates for 4 weeks, approximately 95 percent (113 percent and 77 percent), of the quota would likely be caught during this period. Thus, NMFS proposes to open the fishery in the Gulf of Mexico on August 1, 2005.

Based on the average July and August LCS catch rates combined in recent years for the South Atlantic region, approximately 81 percent of the available second trimester LCS quota (182.0 mt dw) would likely be taken in 6 weeks and 100 percent of the available LCS quota would likely be taken in 8 weeks. Dealer data also indicate that, on average, approximately 17 mt dw of LCS has been reported received by dealers during a Federal closure. This is approximately 9 percent of the available quota. Thus, if catch rates in 2005 are similar to the average catch rates from 2000 to 2004, 90 percent (81 percent + 9 percent) of the quota could be caught in 6 weeks, and 109 percent (100 percent + 9 percent) of the quota could be caught in 8 weeks.

Based on the average LCS catch rates for August in recent years for the South Atlantic region, approximately 56 percent of the available second trimester LCS quota would likely be taken in 6 weeks and 74 percent of the available LCS quota would likely be taken in 8 weeks. Thus, if catch rates in 2005 are similar to the average catch rates from 2000 to 2004, 65 percent (56 percent + 9 percent) of the quota could be caught in 6 weeks, and 83 percent (74 percent + 9 percent) of the quota could be caught in 8 weeks. Taking into account the average of the two catch rates for 8 weeks (109 percent and 83 percent), approximately 96 percent of the quota would likely be caught during this period. Thus, in order for the second and third trimester seasons to run consecutively without exceeding the quota during the second trimester season, NMFS proposes to open the fishery in the South Atlantic on July 1, 2005.

Based on the average July and August LCS catch rates combined in recent years for the North Atlantic region, approximately 80.7 percent of the available second trimester LCS quota (65.2 mt dw) would likely be taken in 4 weeks and 104 percent of the available LCS quota would likely be taken in 6 weeks. Dealer data also indicate that, on average, approximately 9 mt dw of LCS has been reported received by dealers during a Federal closure. This is approximately 14 percent of the available quota. Thus, if catch rates in 2005 are similar to the average catch rates from 2000 to 2004, 94.7 percent (80.7 + 14 percent) of the quota could be caught in 4 weeks, and 118 percent (104 percent + 14 percent) in 6 weeks. Thus, allowing the fishery to stay open for 6 weeks could result in an overharvest.

Based on the average August LCS catch rates in recent years for the North Atlantic region, approximately 46 percent of the available second trimester LCS quota would likely be taken in 4 weeks and 70 percent of the available LCS quota would likely be taken in 6 weeks. Thus, if catch rates in 2005 are similar to the average catch rates from 2000 to 2004, 60 percent (46 percent + 14 percent) of the quota would likely be caught by in 4 weeks, and 84 percent of the quota would likely be caught in 6 weeks (70 percent + 14 percent). Taking into account the average of the two catch rates for 6 weeks (118 percent and 74 percent), approximately 96 percent of the quota would likely be caught during this period. Thus, in order for the second and third trimester seasons to run consecutively without exceeding the quota during the second trimester season, NMFS proposes to open the fishery in the North Atlantic on July 15, 2005.

Proposed Fishing Season Notification for the Third Season

The third trimester fishing season of the 2005 fishing year for LCS, SCS, pelagic sharks, blue sharks, and porbeagle sharks in all regions in the northwestern Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, is proposed to open on September 1, 2005. When quotas are projected to be reached for the SCS, pelagic, blue, or porbeagle shark fisheries, the AA will file notification of closures at the Office of the Federal Register at least 14 days before the effective date, as consistent with 50 CFR 635.28(b)(2).

NMFS is proposing to close the third trimester season LCS fishery in the North Atlantic on September 14, 2005, at 11:30 p.m. local time, in the Gulf of Mexico on October 31, 2005, at 11:30 p.m. local time, and in the South Atlantic on December 15, 2005, at 11:30 local time.

Since the LCS fishery has historically been closed during much of the third trimester period, NMFS used average LCS catch rates from August and September in recent years (2000–2004) to estimate the third trimester season catch rates and closure dates for each of the regions. NMFS used this precautionary approach of averaging catch rates from August and September because of the potential for higher effort in September than has been observed in the past, and to reduce the likelihood of an overharvest. Using catch rates from August alone may not be appropriate because catch rates during that month have been higher historically than during September, and because it does not fall within the third trimester season. However, using catch rates from September alone may also not be appropriate because of the lack of data during that month. Hence, NMFS used the average of the 2-month catch rates.

In the Gulf of Mexico, approximately 79 percent of the available third trimester LCS quota (167.8 mt dw) would likely be taken by the end of October and 99 percent of the available LCS quota would likely be taken by the second week of November. Dealer data also indicate that, on average, approximately 6.5 mt dw of LCS has been reported received by dealers after a Federal closure. This is approximately 4 percent of the available quota. Thus, if catch rates in 2005 are similar to the average catch rates from 2001 to 2004, 82 percent (79 percent + 4 percent) of the quota could be caught by the end of October. If the fishery were to remain open until the second week of November, the quota would likely be exceeded (99 percent + 4 percent = 103 percent). Accordingly, NMFS is proposing to close the Gulf of Mexico LCS fishery on October 31, 2005, at 11:30 p.m. local time.

In the South Atlantic, approximately 86 percent of the available third trimester LCS quota (187.5 mt dw) would likely be taken by the second week of December and 98 percent of the available LCS quota would likely be taken by the end of December. Dealer data also indicate that, on average, approximately 18 mt dw of LCS has been reported received by dealers after a Federal closure. This is approximately 10 percent of the available quota. Thus, if catch rates in 2005 are similar to the average catch rates from 2001 to 2004, 96 percent (86 percent + 10 percent) of the quota could be caught by the second week of December. If the fishery were to remain open until the end of December, the quota would likely be exceeded (98 percent + 10 percent = 108 percent). Accordingly, NMFS is proposing to close the South Atlantic LCS fishery on December 15, 2005, at 11:30 p.m. local time.

In the North Atlantic, approximately 68 percent of the available third trimester LCS quota (4.8 mt dw) would likely be taken by the second week of

September and 135 percent of the available LCS quota would likely be taken by the end of September. Dealer data also indicate that, on average, approximately 7 mt dw of LCS has been reported received by dealers after a Federal closure. This is approximately 151 percent of the available quota. Thus, if catch rates in 2005 are similar to the average catch rates from 2001 to 2004, 219 percent (68 percent + 151 percent) of the quota could be caught by the second week of September. Accordingly, NMFS is proposing to close the North Atlantic LCS fishery on September 15, 2005, at 11:30 p.m. local time.

Request for Comments

NMFS will hold one public hearing (see **DATES** and **ADDRESSES**) to receive comments from fishery participants and other members of the public regarding these proposed alternatives. These hearings will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Chris Rilling at (301) 713–2347 at least 5 days prior to the hearing date. For individuals unable to attend a hearing, NMFS also solicits written comments on this proposed rule (see **DATES** and **ADDRESSES**).

Classification

The Chief Counsel for Regulation at the Department of Commerce certified to the Chief Counsel for Advocacy at the Small Business Administration that this action would not have a significant economic impacts on a substantial number of small entities. This proposed rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* Consistent with 50 CFR 635.279(b)(1)(iii) and (iv), the purpose of this action is to adjust the LCS and SCS trimester quotas based on over- or underharvests from the 2004 fishing season, and to announce the 2005 second and third trimester season opening and closing dates. This proposed rule will not increase overall quotas, landings or regional percentages for LCS or SCS, implement any new management measures not previously considered, and is not expected to increase fishing effort or protected species interactions.

This proposed rule would result in a net positive economic impact for the South Atlantic and North Atlantic and a minimal negative economic impact for the Gulf of Mexico. The 2003 average ex-vessel price for LCS flesh was $0.79/lb, and the average ex-vessel price for SCS flesh was $0.53/lb dw. Although shark fins command a higher price ($19.86/lb dw), they represent only a small proportion of the total landings. The Gulf of Mexico experienced a net overharvest of 56.6 mt dw (−$98,576, excluding fins) of LCS during the two 2004 semi-annual seasons and a net underharvest of 30.8 mt dw (+$35,987) of SCS during the 2004 seasons. Thus, the net economic impact to the Gulf of Mexico is approximately −$62,589. This represents a small fraction of the overall gross revenue for the fishery ($4.5 million in 2003) and does not represent a significant negative economic impact. For the South Atlantic and the North Atlantic, which both experienced net underharvests of 85.9 mt dw and 5.15 mt dw for LCS, respectively, and 299.7 mt dw and 43.5 mt dw for SCS, respectively, during 2004, the net economic impact would be positive. For the South Atlantic, if the entire quota is caught, this could result in a net economic benefit of approximately $499,786 ($149,606 for LCS, excluding fins + $350,180 for SCS). For the North Atlantic, if the entire quota is caught, this could result in net economic benefit of approximately $59,115 ($8,288 for LCS, excluding fins + $50,827 for SCS).

This rule is expected to impact 253 directed commercial shark permit holders, 358 incidental commercial shark permit holders, and 267 commercial shark dealers, all of which are considered small entities according to the Small Business Administration's standard for defining a small entity (5 U.S.C. 603(b)(3)).

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS has determined preliminarily that these regulations would be implemented in a manner consistent to the maximum extent practicable with the enforceable policies of those coastal states on the Atlantic including the Gulf of Mexico and Caribbean that have approved coastal zone management programs. Letters have been sent to the relevant states asking for their concurrence.

Dated: March 4, 2005.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

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Notices

Federal Register
Vol. 70, No. 46
Thursday, March 10, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Exemption Regarding Historic Preservation Review Process for Effects to the Interstate Highway System

AGENCY: Advisory Council on Historic Preservation.

ACTION: Approval of exemption regarding the Interstate Highway System.

SUMMARY: The Advisory Council on Historic Preservation has approved an exemption that would relieve Federal agencies from the requirement of taking into account the effects of their undertakings on the Interstate Highway System, except with regard to certain individual elements or structures that are part of the system. The proposed exemption was published in the **Federal Register** on December 29, 2004 with a 30 day period for public comment. Minor revisions were made in response to these comments.

DATES: The exemption goes into effect on March 10, 2005.

FOR FURTHER INFORMATION CONTACT: Carol Legard, (202) 606–8522.

SUPPLEMENTARY INFORMATION: Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f (''Section 106''), requires Federal agencies to take into account the effects of their undertakings on historic properties and provide the Advisory Council on Historic Preservation (''ACHP'') a reasonable opportunity to comment with regard to such undertakings. Historic properties are those that are listed on the National Register of Historic Places (''National Register'') or eligible for such listing.

The National Historic Preservation Act (''NHPA'') authorizes the ACHP to promulgate regulations for exempting undertakings ''from any or all of the requirements of'' the Act. 16 U.S.C. 470v. The Section 106 regulations, found at 36 CFR part 800, detail the process for the approval of such exemptions. 36 CFR 800.14(c).

In accordance with the Section 106 regulations, the ACHP may approve an exemption for an undertaking if it finds that: (i) the actions within the program or category would otherwise qualify as ''undertakings'' as defined in 36 CFR 800.16; (ii) the potential effects of the undertakings within the program or category upon historic properties are foreseeable and likely to be minimal or not adverse; and (iii) exemption of the program or category is consistent with the purposes of the NHPA.

I. Background

Since the year 2001, when parts of the Interstate Highway System were first suggested as potentially eligible for inclusion in the National Register, the Federal Highway Administration (''FHWA'') has been considering how best to address the historic preservation implications of managing the Dwight D. Eisenhower National System of Interstate and Defense Highways (''Interstate System''). FHWA and State Departments of Transportation (''State DOTs'') were concerned that without appropriate provisions in place, such National Register eligibility determinations could present an inordinate administrative burden under the provisions of Section 106 of the NHPA and Section 4(f) of the Department of Transportation Act, 23 U.S.C. 138 and 49 U.S.C. 303 (''Section 4(f)'').

FHWA initially worked with an ad hoc task force of key stakeholders to develop a strategy to address the historic preservation issues. All agreed that a nationally coordinated approach was needed. The FHWA, in consultation with the ACHP and the National Conference of State Historic Preservation Officers (''NCSHPO''), determined that this nationwide approach should acknowledge the importance of the Interstate System in American history, but also recognize that ongoing maintenance, improvements, and upgrades are necessary to allow the system to continue to serve the transportation needs of the nation. ACHP and FHWA initially developed a draft Programmatic Agreement (''PA''), but a number of FHWA divisions and the American Association of State Highway and Transportation Officials (''AASHTO'') objected to the approach taken in the PA, in part due to the statement in that document that the entire 46,700 mile long Interstate Highway System would be treated as if it was eligible for inclusion in the National Register. Many divisions were also concerned with the expectation that each State would be responsible for identifying sections of the Interstate System within that State having national (as opposed to State or local) significance and then requiring consideration of such sections under Section 106. In light of these concerns, and the passage of a bill prohibiting FHWA from pursuing the proposed PA, an administrative exemption was determined to be the most appropriate approach to resolving all parties' concerns.

The ACHP published the proposed exemption in the **Federal Register** for public comment. 69 FR 77979–77981 (December 29, 2004). After considering all public comments, and making revisions accordingly, the ACHP approved the final exemption on February 18, 2005. The text of that final exemption can be found at the end of this notice.

II. Exemption Concept

The final exemption releases all Federal agencies from the Section 106 requirement of having to take into account the effects of their undertakings on the Interstate System, except for a limited number of individual elements associated with the system. The exemption embodies the view that the Interstate System is historically important, but only certain particularly important elements of that system, as noted below, warrant consideration. Such elements would still be considered under Section 106. The exemption takes no position on the eligibility of the Interstate System as a whole.

The Interstate System elements that will still be considered under Section 106 are limited to certain defined elements, such as historic bridges, tunnels, and rest areas, that: (a) Are at least 50 years old, possess national significance, and meet the National Register eligibility criteria (36 CFR part 63); (b) are less than 50 years old, possess national significance, meet the National Register eligibility criteria, and are of exceptional importance; or (c) were listed in the National Register, or

determined eligible for the National Register by the Keeper pursuant to 36 CFR part 63, prior to the effective date of the exemption. FHWA, at the headquarters level, in consultation with stakeholders in each State, will make the determination of which elements of the system meet these criteria. Additionally, FHWA may include properties of State or local significance, so long as they meet the National Register eligibility criteria, were constructed prior to 1956, and were later incorporated into the Interstate System.

The exemption requires FHWA to designate, by June 30, 2006, individual elements of the Interstate System that will continue being considered under Section 106. That date marks the 50 year anniversary of the legislation authorizing the system. FHWA Headquarters will be responsible for completing the necessary consultation and analysis to identify these elements. Prior to the completion of this study and publication of the list of designated elements by FHWA headquarters, FHWA Divisions may assume that an affected section of the Interstate System is not eligible for inclusion in the National Register unless: (1) it is already listed, or has been determined eligible for listing, in the National Register (such a determination would be one done either by the Keeper of the National Register or through consensus of the FHWA and the relevant State Historic Preservation Officer (''SHPO'')); or (2) in FHWA's estimation, it is likely to meet the criteria established in Section III of the exemption.

The exemption concerns only the effects of Federal undertakings on the Interstate System. It does not alter the Section 106 review obligations regarding any non-Interstate System historic properties that may be affected by an undertaking. Each Federal agency remains responsible for complying with Section 106 regarding effects of its undertakings on historic properties that are not components of the Interstate System. For example, Federal agencies must still comply with Section 106 regarding archaeological sites that may be affected by ground disturbing activities and historic properties of religious and cultural significance to Indian tribes that may be affected.

This exemption supercedes the requirements for review and consultation contained in any existing Programmatic Agreement executed pursuant to the Section 106 regulations with regard only to the consideration of effects to elements of the Interstate System.

III. Exemption Criteria

Pursuant to 36 CFR 800.14(c)(1), Section 106 exemptions must meet certain criteria. Only actions that qualify as undertakings, as defined in 36 CFR 800.16, may be considered for exemption, and the exemption itself must be consistent with the purposes of NHPA. Furthermore, in order to be considered exempted, the potential effects on historic properties of those undertakings should be ''foreseeable and likely to be minimal or not adverse.'' The ACHP believes that the proposed exemption meets these conditions.

Federal funding, permits, or approvals for actions required for maintenance, alterations, or improvements to the Interstate System meet the definition of ''undertaking.'' See 36 CFR 800.16(y). The exemption is also consistent with the purposes of the NHPA. Among other things, the NHPA establishes as the policy of the Government to ''use measures * * * to foster conditions under which our modern society and our prehistoric and historic resources can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations'' and to ''encourage the public and private preservation and utilization of all usable elements of the Nation's historic built environment.'' 16 U.S.C. 470–1(1) and (5). By facilitating the ongoing maintenance, improvements, and upgrades to the Interstate System that ensure the system can continue being utilized for its purposes, and providing for consideration of particularly important, historic elements of the system, the exemption is consistent with the expressed purposes of the NHPA.

The Interstate System is comprised of approximately 46,700 miles of roadway forming a web across the intercontinental United States. The scale of this system and its attendant impact to the social, commercial, and transportation history of the second half of the twentieth century make the construction of this system an extremely important event in American history. The integrity of the system depends on continuing maintenance and upgrades so that it can continue to move traffic efficiently across great distances. While actions carried out by Federal agencies to maintain or improve the Interstate System will, over time, alter various segments of the system, such changes are considered to be ''minimal or not adverse'' when viewing the system as a whole. Moreover, the exemption does not apply to certain historically important elements of the system. By excluding these elements from the exemption, the ACHP and FHWA ensure that the important, character-defining features of the Interstate System are considered through the normal Section 106 review process.

IV. Public Participation

In accordance with 36 CFR 800.14(c)(2), public participation regarding exemptions must be arranged on a level commensurate with the subject and scope of the exemption. In order to meet this requirement, an earlier draft was published for public comment in the **Federal Register** on December 29, 2004 (69 FR 77979–77981). The ACHP has worked closely with FHWA in the development of this exemption and both the ACHP and FHWA consulted with SHPOs, all FHWA Divisions, State DOTs, AASHTO, NCSHPO, and the National Trust for Historic Preservation.

Neither the ACHP nor the FHWA have engaged in consultation with Indian tribes and Native Hawaiian organizations pursuant to 36 CFR 800.14(c)(4), since the exemption is limited to effects on the Interstate System itself, which does not qualify as a historic property of cultural and religious significance to such tribes and organizations. Moreover, the exemption will not apply on tribal lands.

V. Response to Public Comment

In response to publication of the draft exemption in the **Federal Register**, the ACHP received comments from 33 individuals and organizations. Of these, 26 expressed support for the proposed exemption (some offering constructive comments) and five opposed it. Two others offered comments without expressing either support or opposition.

Comments in support of the exemption were received from 18 State DOTs, AASHTO, the American Council of Engineering Companies, the American Cultural Resource Associates, the American Road and Transportation Builders Association, NCSHPO, the Society for American Archaeology, the Western Association of State Highway and Transportation Officials, and regional staff of the U.S. Forest Service.

Comments opposing the proposed exemption were received from regional staff of two Federal agencies (National Park Service and Federal Wildlife Service), the staff of two SHPOs (from Florida and Virginia), and two State DOTs (from Virginia and West Virginia). Objections to the exemption and the ACHP's responses are summarized below:

1. There was a concern by one comment that the exemption did not

meet all of the criteria for an exemption. In particular, that reviewer commented that the proposed exemption failed to meet the criterion that the effects be ''foreseeable and likely to be minimal or not adverse.'' The reviewer argued that such effects should not be evaluated on the basis of impacts on the entire 46,700 mile-long Interstate System, since this was beyond the experiential scale of the property. The ACHP disagrees. The ACHP recognizes the Interstate System as a transportation system of exceptional importance based on its scale and attendant impact to social, commercial, and transportation history in the United States. The Interstate System has been evolving since its inception as it has been constructed, expanded, and upgraded to serve the transportation needs of the nation and, therefore, its integrity lies in its location, feeling, and association which are rooted in the connectivity of the system as a whole. Continuing maintenance, improvements, and upgrades will, by and large, maintain the characteristics that define the Interstate System. Furthermore, as already explained above, the exemption (in Section III) allows for the Section 106 consideration of historically significant elements of the system. Also, Section III(b) of the exemption allows States and local governments an opportunity to identify other elements of the system that have significance at the State or local level that were constructed prior to 1956 and later incorporated into the Interstate System.

2. Several parties expressed concern about the process for designating individual elements requiring Section 106 review. Comments included statements that the exemption provides insufficient time for FHWA to complete the work, that a context study should be completed prior to designating elements to be excluded from the exemption, that a context and a list of designated elements should be made available to other Federal agencies, and that the process for SHPO and public involvement should be detailed in the exemption. A comment also suggested that FHWA lacks the necessary expertise to identify individual elements that should be excluded from the exemption.

In response to these comments, the ACHP revised Section II to require FHWA to publish the list of designated elements on its Web site, and included the Web site location in the final exemption. FHWA headquarters is confident that it will be able, with the use of qualified consultants, to complete the designation of excluded elements by the June 30, 2006 deadline. A context study for the Interstate System has already been completed, and FHWA will soon make it available to the public as part of its obligation under Section IV of the exemption to recognize, interpret, and commemorate the public historic of the Interstate System. State DOTs, FHWA Division staff and SHPOs will be consulted from each State and will be given an opportunity to identify additional parties (*e.g.*, historic highway organizations) that should be consulted. FHWA will also consult with the ACHP, the National Trust for Historic Preservation, and the Keeper of the National Register in determining which elements should be excluded from the exemption. The identification of elements will be based on this consultation and existing information, rather than on a comprehensive survey of the system, and should be manageable in the time allotted. The intent of Section II of the exemption is to create a process that provides a national perspective and consistency in the application of the criteria. It was also intended to allow FHWA to designate elements of the system that will require further consideration in a cooperative and efficient manner, without placing the burden for this analysis on State DOTs and SHPOs. This effort will be conducted by a qualified consultant under the supervision of FHWA headquarters staff with expertise in historic preservation.

3. Concerns were also expressed about the individual elements to be excluded from the exemption (Section III of the exemption). Some objected that the exemption does not protect elements of the Interstate System of State or local significance, except for those already listed or determined eligible by the Keeper of the National Register. Concerns were also expressed about the protection of historic landscapes, viewsheds, and pristine segments of the Interstate System. Issues regarding protecting elements of State or local significance are addressed in the response to the first concern listed above.

In developing Section III of the exemption, the goal was to focus review and consultation on a limited number of important elements of the system, and thus freeing up FHWA and State DOTs from the burden of documenting and evaluating segments of Interstate highways in their State that lack distinction. In developing this exemption, FHWA and the ACHP agreed that the designation of excluded elements would not be restricted to bridges, tunnels, and rest stops. Rather, significant designed landscapes that include Interstate Highways, even those less than 50 years old but of exceptional significance, might be included on the list. Moreover, viewsheds will be considered under Section 106 where they relate to another historic property affected by the undertaking, such as a National Register eligible traditional cultural property, or a historic district, but Federal agencies will not need to consider the viewshed as it relates to the historic values of the Interstate System itself, except where the relevant element of the system has been designated for exclusion under Section II.

Another comment offered a different perspective on this issue, expressing concern that the excluded elements are likely to be designated National Historic Landmarks (NHLs), thus adding an additional layer of process beyond that afforded most National Register properties. Neither the ACHP nor FHWA propose to nominate any of the designated properties as NHLs, nor has such a designation been proposed by any other party consulted in the development of this exemption. There is no ''added'' layer of review or separate review process required for NHLs or properties of national significance. The already existing requirements regarding NHLs, in Section 110(f) of the NHPA, 16 U.S.C. 470h–2(f), and Section 800.10 of the Section 106 regulations, remain the same.

4. Based on the comments received, it became clear that several reviewers read Section III of the proposed exemption to limit exclusions to bridges, tunnels, and rest areas. As noted above, this was not the ACHP's intent. To correct this, Section III(b) of the exemption has been revised to clarify that certain elements, ''such as'' bridges, tunnels, and rest areas, may be excluded from the exemption, but that the exclusions will not necessarily be limited to those three types of features or properties.

5. Finally, concerns were expressed about the longevity of the exemption. Several parties recommended that the exemption provide for the periodic review and update of the list of individual elements excluded from the exemption or for periodic review of implementation of the exemption by federal agencies. A specific provision for monitoring or periodic review has not been included. Certainly, the ACHP will need to periodically consider the effectiveness of the exemption and whether it continues to meet the purposes of Section 106, and the ACHP has the unilateral authority to terminate the exemption if it finds that it does not meet those purposes. Two comments recommended that ACHP not be able to unilaterally terminate the exemption. However, the Section 106 regulations

are clear regarding this matter: ''The Council may terminate an exemption at the request of the agency official or when the Council determines that the exemption no longer meets the criteria of paragraph (c)(1) of this section.'' 36 CFR 800.14(c)(7). The ACHP would not, however, terminate the exemption without first consulting FHWA.

VI. Text of the Exemption

The full text of the final exemption is reproduced below:

Section 106 Exemption Regarding Effects to the Interstate Highway System

I. Exemption From Section 106 Requirements

Except as noted in Sections II and III, all Federal agencies are exempt from the Section 106 requirement of taking into account the effects of their undertakings on the Interstate Highway System.

This exemption concerns solely the effects of Federal undertakings on the Interstate Highway System. Each Federal agency remains responsible for considering the effects of its undertakings on other historic properties that are not components of the Interstate Highway System (*e.g.*, adjacent historic properties or archaeological sites that may lie within undisturbed areas of the right of way) in accordance with subpart B of the Section 106 regulations or according to an applicable program alternative executed pursuant to 36 CFR 800.14.

II. Process for Designating Individual Elements Requiring Section 106 Review

By June 30, 2006, the Federal Highway Administration shall designate individual elements of the Interstate System that are to be excluded from this exemption. FHWA will publish the list of such designated elements on its Web site (*http://environment.fhwa.dot.gov/histpres/index.htm*). The Federal Highway Administration headquarters shall make the designations, following consultation with the relevant State Transportation Agencies, Federal Highway Administration Divisions, State Historic Preservation Officers, the Advisory Council on Historic Preservation, and the public. The Federal Highway Administration headquarters may, as needed, consult the Keeper of the National Register to resolve questions or disagreements about the National Register eligibility of certain elements.

III. Individual Elements Excluded From Exemption

(a) The following elements of the Interstate Highway System shall be excluded from the scope of this exemption, and therefore shall require Section 106 review:

(i) Elements that are at least 50 years old, possess national significance, and meet the National Register eligibility criteria (36 CFR part 63), as determined pursuant to Section II;

(ii) Elements that are less than 50 years old, possess national significance, meet the National Register eligibility criteria, and are of exceptional importance (and therefore meet criteria consideration G for properties that have achieved significance within the last fifty years), as determined pursuant to Section II; and

(iii) Elements that were listed in the National Register, or determined eligible for the National Register by the Keeper pursuant to 36 CFR part 63, prior to the effective date of this exemption.

(b) The following elements of the Interstate Highway System may be excluded from the exemption, at the discretion of the Federal Highway Administration: Elements such as bridges, tunnels, and rest areas so long as they were constructed prior to June 30, 1956, were later incorporated into the Interstate Highway System, possess State or local significance, and meet the National Register eligibility criteria, as determined pursuant to Section II.

IV. Interpretation and Commemoration

The Federal Highway Administration will recognize, interpret, and commemorate the public history of the Interstate Highway System as it shaped the latter half of the twentieth century. Available for broad public use, this effort shall include the completion of a popular publication and/or development of a Web site providing information and educational material about the Interstate Highway System and its role in American history.

V. Potential for Termination

The Advisory Council on Historic Preservation may terminate this exemption in accordance with 36 CFR 800.14(c)(7) if it determines that the purposes of Section 106 are not being adequately met.

VI. Definitions

The following definitions shall apply to this exemption:

(a) ''Section 106'' means Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f, and its implementing regulations, found under 36 CFR part 800.

(b) ''Undertaking'' means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license or approval.

(c) ''Interstate Highway System'' shall be defined as the Dwight D. Eisenhower National System of Interstate and Defense Highways as set forth in 23 U.S.C. 103(c), that being commonly understood to be the facilities within the rights-of-way of those highways carrying the official Interstate System shield, including but not limited to the road bed, engineering features, bridges, tunnels, rest stops, interchanges, off-ramps, and on-ramps.

Authority: 16 U.S.C. 470v; 36 CFR 800.14(c).

Dated: March 7, 2005.

Don Klima,

Acting Executive Director.

[FR Doc. 05–4739 Filed 3–9–05; 8:45 am]

BILLING CODE 4310–10–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 04–140–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for the importation of poultry meat and other poultry products from Sinaloa and Sonora, Mexico, into the United States.

DATES: We will consider all comments that we receive on or before May 9, 2005.

ADDRESSES: You may submit comments by any of the following methods:

- EDOCKET: Go to *http://www.epa.gov/feddocket* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once you have entered EDOCKET, click on the ''View Open APHIS Dockets'' link to locate this document.
- Postal Mail/Commercial Delivery: Please send four copies of your

comment (an original and three copies) to Docket No. 04–140–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 04–140–1.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: You may view APHIS documents published in the **Federal Register** and related information on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: For information on regulations for the importation of poultry meat and other poultry products from Sinaloa and Sonora, Mexico, contact Dr. Christopher Robinson, Senior Staff Veterinarian, Technical Trade Services Team, National Center for Import and Export, VS, 4700 River Road Unit 39, Riverdale, MD 20737; (301) 734–7837. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Importation of Poultry Meat and Other Poultry Products from Sinaloa and Sonora, Mexico.

OMB Number: 0579–0144.

Type of Request: Extension of approval of an information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture is responsible for, among other things, regulating the importation into the United States of certain animals and animal products to prevent the introduction of serious pests and diseases of livestock into the United States.

The regulations for the importation of animals and animal products are contained in 9 CFR parts 92 through 98.

The regulations in part 94, among other things, restrict the importation of poultry meat and other poultry products from Mexico and other regions of the world where exotic Newcastle disease (END) has been determined to exist. The regulations allow the importation of poultry meat and poultry products from the Mexican States of Sinaloa and Sonora under conditions that protect against the introduction of END into the United States.

To ensure that these items are safe for importation, we require that certain data appear on the foreign meat inspection certificate that accompanies the poultry meat or other poultry products from Sinaloa and Sonora. We also require that serially numbered seals be applied to containers carrying the poultry meat or other poultry products.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.*, permitting electronic submission of responses.

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Federal animal health authorities in Mexico, and personnel in Sinaloa and Sonora, Mexico, who operate slaughtering and processing plants and who engage in the export of poultry meat and other poultry products to the United States.

Estimated Annual Number of Respondents: 10.

Estimated Annual Number of Responses Per Respondent: 4.

Estimated Annual Number of Responses: 40.

Estimated Total Annual Burden on Respondents: 40 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 4th day of March 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–4706 Filed 3–9–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Willamette Province Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Willamette Province Advisory Committee (PAC) will meet in Salem, Oregon. The purpose of the meeting is to discuss issues pertinent to the implementation of the Northwest Forest Plan and to provide advice to Federal land managers in the Province. The topics to be covered at the meeting include an update on BLM Resource Management Plan revisions, review plans for Province monitoring in 2005, update on PAC charter renewal and membership recruitment and information sharing.

DATES: The meeting will be held April 7, 2005.

ADDRESSES: The meeting will be held at the Salem District Office of the Bureau of Land Management, 1717 Fabry Road, Salem, Oregon. Send written comments to Neal Forrester, Willamette Province Advisory Committee, c/o Willamette National Forest, P.O. Box 10607, Eugene, Oregon 97440, (541) 225–6436 or electronically to *nforrester@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Neal Forrester, Willamette National Forest, (541) 225–6436.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to PAC members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the PAC staff before or after the meeting. A public forum will be provided and individuals will have the opportunity to address the PAC. Oral comments will be limited to three minutes.

Dated: March 4, 2005.

Doris Tai,

Acting Forest Supervisor, Willamette National Forest.

[FR Doc. 05–4682 Filed 3–9–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[04–CA–C]

Opportunity to Comment on the Applicants for the California Area

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: GIPSA requests comments on the applicants for designation to provide official services in the California area.

DATES: Comments must be postmarked or electronically dated on or before April 11, 2005.

ADDRESSES: We invite you to submit comments on the applicants by any of the following methods:

- Hand Delivery or Courier: Deliver to Janet M. Hart, Chief, Review Branch, Compliance Division, GIPSA, USDA, Room 1647–S, 1400 Independence Avenue, SW., Washington, DC 20250.
- Fax: Send by facsimile transmission to (202) 690–2755, attention: Janet M. Hart.
- E-mail: Send via electronic mail to *Janet.M.Hart@usda.gov.*
- Mail: Send hardcopy to Janet M. Hart, Chief, Review Branch, Compliance Division, GIPSA, USDA, STOP 3604, 1400 Independence Avenue, SW., Washington, DC 20250–3604.

Read Comments: All comments will be available for public inspection at the office above during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Janet M. Hart at (202) 720–8525, e-mail *Janet.M.Hart@usda.gov.*

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the January 18, 2005, **Federal Register** (70 FR 2844), GIPSA announced that California Department of Food and Agriculture asked GIPSA for a voluntary cancellation of their designation effective April 30, 2005. Accordingly, California's designation will cease effective April 30, 2005, and GIPSA asked persons interested in providing official services in the California area to submit an application for designation by February 17, 2005.

There were four applicants for the California area: Farwell Commodity and Grain Services, Inc. (Farwell Southwest) an official agency designated effective April 1, 2005; a company proposing to do business as California Agri Inspection Co., Ltd. (California Agri) with the parent company of Overseas Merchandise Inspection Co., Ltd.; California Grain Inspection Services (California Grain), a partnership owned by Robert Chavez and Tim A. Walters; and Imperial Grain Inspection Service (Imperial) a partnership owned by Tim A. Walters and Debra J. Walters.

Farwell Southwest applied for designation in Imperial, San Diego, and Riverside Counties, California.

California Agri applied for designation in Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Modoc, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Joaquin, Santa Clara, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tuolumne, Yolo, and Yuba, Counties, California.

California Grain applied for designation in Corcoran, Fresno, Imperial, Kern, Kings, Los Angeles, Madera, Merced, Monterey, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Tulare, and Ventura Counties, California.

The proposed applicants named above indicated they would be willing to accept more or less area in order to provide needed service to all requestors.

Imperial applied for designation only in Imperial, San Bernardino, San Diego, and Riverside Counties, California.

GIPSA is publishing this notice to provide interested persons the opportunity to present comments concerning the applicants. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of the applicants. All comments must be submitted to the Compliance Division at the above address. Comments and other available information will be considered in making a final decision. GIPSA will publish notice of the final decision in the **Federal Register**, and GIPSA will send the applicants written notification of the decision.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: March 4, 2005.

David R. Shipman,

Deputy Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 05–4703 Filed 3–9–05; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Amendment to Certification of Nebraska's Central Filing System

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: In response to a request from Nebraska's Deputy Secretary of State we are approving the addition of a farm product to Nebraska's certified central filing system for notification of liens on farm products.

EFFECTIVE DATE: March 4, 2005.

SUPPLEMENTARY INFORMATION: The Grain Inspection, Packers and Stockyards Administration (GIPSA) administers the Clear Title program for the Secretary of Agriculture. The Clear Title program is authorized by section 1324 of the Food Security Act of 1985 and requires that States implementing central filing system for notification of liens on farm products must have such systems certified by the Secretary of Agriculture.

A listing of the states with certified central filing systems is available through the Internet on the GIPSA Web site (*http://www.usda.gov/gipsa/*). Listings of the specified farm products covered by a State's central filing system are also available through the GIPSA Web site.

We originally certified the central filing system for Nebraska on December 19, 1986. On October 4, 2004, Debbie Pester, Nebraska's Deputy Secretary of State, requested the certification be amended to add the following farm product produced in Nebraska:

Embryos/Genetic Products

This addition of embryos and genetic products to Nebraska's central filing system is limited to embryos or genetic products of specified farm products which have previously been approved under Nebraska's central filing system and which are added by subsequent certification amendment. Farm products previously approved under Nebraska's central filing system are listed in the following table.

PREVIOUSLY APPROVED FARM PRODUCTS FOR NEBRASKA'S CENTRAL FILING SYSTEM

Apples	Oats
Artichokes	Onions
Asparagus	Ostrich
Barley	Popcorn
Bees	Potatoes
Buffalo	Pumpkins

PREVIOUSLY APPROVED FARM PRODUCTS FOR NEBRASKA'S CENTRAL FILING SYSTEM—Continued

Bull Semen	Raspberries
Cantaloupe	Rye
Carrots	Seed Crops
Cattle & Calves	Sheep & Lambs
Chickens	Silage
Corn	Sorghum Grain
Cucumbers	Soybeans
Dry Beans	Squash
Eggs	Strawberries
Emu	Sugar Beets
Fish	Sunflower Seeds
Flax Seed	Sweet corn
Grapes	Tomatoes
Hay	Trees
Hogs	Triticale
Honey	Turkeys
Honey Dew Melon	Vetch
Horses	Walnuts
Llama	Watermelon
Milk	Wheat
Muskmelon	Wool

This notice announces the amended certification for Nebraska's central filing system in accordance with the request to add an additional farm product.

Effective Date: This notice is effective upon signature for good cause because it will allow Nebraska to provide information about an additional farm product through its central filing system. Approving additional farm products for approved central filing systems does not require public notice. Therefore, this notice may be made effective in less than 30 days after publication in the **Federal Register** without prior notice or other public procedure.

Authority: 7 U.S.C. 1631, 7 CFR 2.22(a)(3)(v) and 2.81(a)(5), and 9 CFR 205.101(e).

Dated: March 4, 2005.

Gary McBryde,

Acting Deputy Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 05–4704 Filed 3–9–05; 8:45 am]

BILLING CODE 3410–EN–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

DATE AND TIME: Friday, March 18, 2005, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 9th Street, NW., Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of February 18, 2005 Meeting
III. Announcements
IV. Staff Director's Report
V. Program Planning
- Consideration of proposals for projects to be undertaken by the Commission during FY 2005, 2006 and 2007

VI. Management and Operations
VII. Report of the Working Group on Reform
VIII. Future Agenda Items

CONTACT FOR FURTHER INFORMATION: Kenneth L. Marcus, Press and Communications (202) 376–7700.

Debra A. Carr,

General Counsel.

[FR Doc. 05–4851 Filed 3–8–05; 1:38 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No.: 050302054–5054–01]

Meeting With Interested Public on Humanitarian Shipments to Sudan

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The Bureau of Industry and Security (BIS) publishes this notice to announce that the agency will hold a meeting on March 28, 2005 for organizations interested in exporting ''tools of trade'' items for humanitarian work in Sudan under a License Exception, as provided under the rule BIS published in the **Federal Register** on February 18, 2005. U.S. Government officials will provide information at this meeting on the use of this License Exception for Sudan. This meeting is open to the public.

DATES: The meeting will be held on March 28, 2005, 2 p.m. e.s.t.

ADDRESSES: If you wish to attend the meeting, please provide your name and company or organizational affiliation to fax numbers (202) 482–4145 or (202) 482–6088, Attn: Sudan Briefing, or call (202) 482–5537. The meeting will be held at the Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenues, NW., Room 4830, Washington, DC.

FOR FURTHER INFORMATION CONTACT: For further information, please contact Eric Longnecker at BIS on (202) 482–5537 or (202) 482–4252.

SUPPLEMENTARY INFORMATION: On February 18, 2005, the Bureau of Industry and Security (BIS) published a Final Rule in the **Federal Register** that allows certain organizations working to relieve human suffering in Sudan, including those registered with the Department of the Treasury's Office of Foreign Assets Control (OFAC) pursuant to the Sudanese Sanctions Regulations (31 CFR 538.521), as well as their staff and employees, to use the authority of License Exception TMP (15 CFR 740.9) to export to Sudan certain ''tools of trade'' items which would otherwise requiring a license from BIS for export to Sudan pursuant to the Export Administration Regulations (15 CFR parts 730–774). As set forth in the February 18, 2005 rule, the newly-added provisions will authorize certain organizations working to relieve human suffering in Sudan to export basic telecommunications equipment, computers, global positioning system (GPS) or similar satellite receivers, and software and parts and components for the use of these items. Eligible goods may be exported to Sudan for up to one year. These items, and the restrictions on the use of this provision, are described in more detail in the February 18, 2005 rule.

In order to provide more information on the use of this License Exception for Sudan, BIS will hold a meeting on March 28, 2005. This meeting is open to the public. In order to prepare for those of you who plan to attend the meeting, please submit your name and company or organizational affiliation to BIS via fax or phone number provided in the **ADDRESSES** section.

Dated: March 4, 2005.

Eileen Albanese,

Director, Office of Exporter Services, Bureau of Industry and Security.

[FR Doc. 05–4737 Filed 3–9–05; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803]

Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Preliminary Results of Administrative Reviews and Preliminary Partial Rescission of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the ''Department'') is conducting administrative reviews of the antidumping duty orders on heavy forged hand tools, finished or unfinished, with or without handles, from the People's Republic of China. These reviews cover imports of subject merchandise from four manufacturers/exporters. We preliminarily find that

certain manufacturers/exporters sold subject merchandise at less than normal value during the POR. If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (''Customs'') to assess antidumping duties on all appropriate entries. We invite interested parties to comment on these preliminary review results. We will issue the final review results no later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: March 10, 2005.

FOR FURTHER INFORMATION CONTACT: Julia Hancock (Huarong), Hallie Zink (Olympia Shanghai) and Paul Walker (TMC), AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1394, (202) 482–6907 and (202) 482–0412, respectively.

SUPPLEMENTARY INFORMATION:

Case History

On February 19, 1991, the Department published in the **Federal Register** four antidumping orders on heavy forged hand tools (''HFHTs'') from the People's Republic of China (''PRC''). *See Antidumping Duty Orders: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles From the People's Republic of China,* 56 FR 6622 (February 19, 1991). Imports covered by these orders comprise the following classes or kinds of merchandise: (1) Hammers and sledges with heads over 1.5 kg (3.33 pounds) (hammers/sledges); (2) bars over 18 inches in length, track tools and wedges (bars/wedges); (3) picks/mattocks; and (4) axes/adzes. *See* the ''Scope of the Antidumping Duty Orders'' section below for the complete description of subject merchandise.

On February 3, 2004, the Department published an opportunity to request a review on all four antidumping orders on HFHTs from the PRC. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 69 FR 5125 (February 3, 2004). On February 27, 2004, Shandong Huarong Machinery Co., Ltd. (''Huarong'') requested an administrative review. On February 27, 2004, Shanghai Xinike Trading Company, Ltd. (''Olympia Shanghai'') requested a new shipper review. On February 27, 2004, the Petitioner requested reviews of 302 companies, covering all four antidumping duty orders. On March 26, 2004, the Department initiated the 13th review of HFHTs from the PRC, covering all four antidumping duty orders for 194 companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part* (''*Initiation*''), 69 FR 15788 (March 26, 2004).

On April 12 and 13, 2004, the Department issued shortened section A antidumping duty questionnaires to companies for which the Department initiated administrative reviews.[1] On April 14, 2004, the Department issued sections A, C, D, and E of the General Antidumping Duty Questionnaire to Tianjin Machinery Import and Export Corporation (''TMC''), Huarong, Liaoning Machinery Import and Export Corporation (''LMC''), LIMAC, Shandong Machinery Import and Export Corp. (''SMC''), Shandong Jinma Industrial Group Company (''Jinma'') and Olympia Shanghai. On April 15, 2004, the Department requested the assistance of representatives of the government of the PRC in transmitting the shortened section A antidumping duty questionnaires to all companies who manufacture or export HFHTs to the United States.

On April 20, 2004, the Petitioner asked the Department to reject the request for review filed by Olympia Shanghai on February 27, 2004.

On May 5, 2004, the Department issued shortened section A questionnaires to certain additional companies, for which the Department initiated administrative reviews.[2]

On May 6, 2004, TMC requested clarifications regarding the Department's April 14, 2004 questionnaire.

On May 12, 2004, the Department received copies of Chinese laws and regulations that apply to the export activities of Huarong, Olympia Shanghai and TMC from the Respondents. On May 12, 2004, Huarong submitted its section A questionnaire response (''SAQR''). On May 12, 2004, Ningbo Tiangong Great Star Tools Company, Ltd. notified the Department that they had no shipments of HFHTs to the United States during the period of review (''POR'').

On May 13, 2004, TMC and Olympia Shanghai submitted their SAQRs. On May 13, 2004, Fexian Hualu Tool Company, Ltd. notified the Department that it had no shipments of HFHTs to the United States during the POR.

On May 14, 2004, SMC requested an extension of time to respond to section A of the Department's April 14, 2004 questionnaire, which was due May 12, 2004.

On May 15, 2004, Jinhua Twin-Star Tools Company, Ltd. notified the Department that they had no shipments of HFHTs to the United States during the POR.

On May 17, 2004, the Department submitted a memo to the file noting that SMC requested two extensions, one on May 14 and one on May 17, 2004, via telephone, for submitting SMC's SAQR which was due May 12, 2004. On May 17, 2004, the Department notified SMC that its extension request was untimely. On May 17, 2004, ZhangJiagang Tianda Special Hardware Company, Ltd. notified the Department that it had no shipments of HFHTs to the United States during the POR.

On May 18, 2004, the Department issued the remaining shortened section A questionnaires to companies for which the Department initiated administrative reviews.[3]

On May 18, 2004, the Department responded to the Petitioner's April 20, 2004, letter requesting that the Department reject Olympia Shanghai's February 27, 2004, request for a new shipper review. On May 18, 2004, the Department addressed TMC's May 6, 2004, clarification letter concerning the Department's April 14, 2004 questionnaire.

On May 19, 2004, the Petitioner submitted comments on TMC's May 6, 2004, letter requesting clarifications on the Department's April 14, 2004, questionnaire.

On May 25, 2004, the Petitioner submitted an updated Summary of Antidumping Duty Margins at the Department's request.

On June 9, 2004, Huarong submitted its section C&D questionnaire responses (''SCDQR'').

On June 15, 2004, the Petitioner submitted comments on the SAQRs of Olympia Shanghai, TMC and Huarong.

On July 8, 2004, the Department requested from the Office of Policy a memorandum listing surrogate countries.

On July 13, 2004, the Department sent TMC a supplemental SAQ. On July 14, 2004, the Department sent Huarong and Olympia Shanghai supplemental SAQRs.

[1] These companies are not represented by any counsel to the best of the Department's knowledge.

[2] These questionnaires were sent *via* Federal Express (''FedEx''). Of these, FedEx returned 13 questionnaires due to area of delivery problems. The Department re-issued these 13 questionnaires *via* DHL on May 7, 2004. Additionally, 22 questionnaires were returned to the Department because of an incorrect address.

[3] These questionnaires were sent *via* FedEx. Of these, FedEx returned 11 questionnaires as undeliverable.

On July 15, 2004, the Department sent a letter to Huarong and TMC addressing certain formatting problems with its databases. On July 15, 2004, the Petitioner submitted to the Department deficiency comments regarding the SCDQRs of Olympia Shanghai and Huarong. On July 15, 2004, the Department received from the Office of Policy a list of surrogate countries. On July 16, 2004, the Department sent a letter to Olympia Shanghai addressing certain formatting problems with its databases.

On July 19, 2004, the Petitioner submitted to the Department comments on the TMC's SCDQRs. On July 19, 2004, Huarong, Olympia Shanghai and TMC responded to the Department's letter requesting revisions to the Respondents' databases.

On July 22, 2004, the Department sent Huarong and TMC supplemental section C questionnaires.

On July 23, 2004, the Petitioner submitted to the Department comments on surrogate country selection. On July 23, 2004, the Department sent Olympia Shanghai supplemental section C and D questionnaires.

On July 26, 2004, the Department provided all interested parties the opportunity to submit information pertinent to valuing factors of production in this review.

On August 2, 2004, TMC and Huarong submitted their supplemental SAQRs.

On August 6, 2004, the Department sent TMC a supplemental section D questionnaire. On August 10, 2004, the Department sent Huarong a supplemental section D questionnaire.

On August 10, 2004, Huarong and TMC requested guidance on the scope of the antidumping duty orders.

On August 13, 2004, the Department selected India as the surrogate country. On August 13, 2004, Huarong submitted its supplemental section C questionnaire response.

On August 20, 2004, the Department responded to TMC and Huarong's August 10, 2004, request for guidance regarding whether cast tampers are within the scope of the order.

On August 25, 2004, the Petitioner submitted comments on sections A and C questionnaire responses of TMC.

On August 30, 2004, Huarong submitted its supplemental section D questionnaire response.

On September 20, 2004, the Petitioner requested that the Department reopen the administrative record to allow the Petitioner to submit new factual information. On September 22, 2004, the Petitioner submitted comments on the sections A and C supplemental questionnaire responses of Olympia Shanghai.

On September 22, 2004, the Department sent Olympia Shanghai a second supplemental SAQ.

On September 23, 2004, the Petitioner submitted comments on Huarong's sections A and D responses. On September 24, 2004, the Petitioner submitted comments on TMC's supplemental section D response.

On September 28, 2004, the Department sent Huarong a second supplemental SAQ.

On September 29, 2004, the Department sent the Petitioner a letter denying their request to reopen the record in order to submit new factual information.

On September 30, 2004, the Petitioner requested that the Department place certain documents from the 12th Administrative Review on the administrative record of the instant review.

On October 7, 2004, the Department sent Huarong a second supplemental section D questionnaire.

On October 8, 2004, the Department sent TMC a second supplemental section A questionnaire. On October 8, 2004, the Department sent Olympia Shanghai a supplemental section D questionnaire.

On October 15, 2004, the Department received Olympia Shanghai's second supplemental SAQR.

On October 26, 2004, the Department sent TMC a second supplemental section C questionnaire. On October 27, 2004, Huarong submitted corrections to the exhibits accompanying Huarong's response to the Department's second supplemental section A questionnaire. On October 28, 2004, the Department sent Huarong a supplemental section C questionnaire.

On October 29, 2004, the Department extended the time limit for the preliminary results of the instant review on HFHTs from the PRC. *See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review,* 69 FR 63140 (October 29, 2004).

On November 5, 2004, TMC submitted minor corrections to its response to the Department's second supplemental section A questionnaire. On November 15, 2004, TMC submitted its second supplemental section C questionnaire response.

On November 12, 2004, Huarong submitted its second supplemental section C questionnaire response. On November 15, 2004, the Petitioner submitted comments on TMC's supplemental SAQR. On November 15, 2004, Huarong submitted its second supplemental section D questionnaire response. On November 17, 2004, TMC submitted the diskette with the section C database to accompany TMC's November 12, 2004, response to the Department's supplemental section C questionnaire. On November 22, 2004, Huarong and TMC submitted additional documentation to accompany their November 12, 2004, response to the Department's second supplemental section C questionnaire.

On November 29, 2004, TMC submitted comments responding to the Petitioner's comments regarding TMC's ownership.

On December 14, 2004, the Department notified all interested parties that publicly available information to value factors of production must be submitted by December 28, 2004, for consideration in these preliminary results.

On December 20, 2004 the Petitioner submitted comments on the supplemental sections A, C & D questionnaire responses of TMC.

On December 23, 2004, the Department sent TMC a supplemental questionnaire regarding certain deficiencies in its section A, C and D questionnaire responses.

On December 30, 2004, the Petitioner submitted comments on the supplemental questionnaire response of Huarong. On January 6, 2005, the Department sent Huarong a supplemental questionnaire addressing certain deficiencies in Huarong's section A, C and D questionnaire responses. On January 21, 2005, the Department sent Huarong a third supplemental section A questionnaire.

On January 26, 2005, the Department sent TMC a letter requesting that TMC revise its databases. On January 26, 2005, Huarong submitted its third supplemental section A, C & D questionnaire response.

On January 27, 2005, the Department sent Huarong a supplemental questionnaire. On January 28, 2005, the Department sent Olympia Shanghai a supplemental questionnaire. On February 1, 2005, Huarong requested an extension from February 2, 2005, until February 7, 2005, to respond to the Department's January 27, 2005 supplemental questionnaire. On February 1, 2005, the Department denied Huarong's extension request because the Department had already extended the deadline by two days from January 31, 2005, until February 2, 2005.

On February 2, 2005, TMC submitted a revised database in response to the Department's January 25, 2005 letter. On February 2, 2005, the Department sent Olympia Shanghai a supplemental questionnaire.

On February 3, 2005, TMC submitted a corrected database in response to the Department's January 26, 2005 letter. On February 3, 2005, the Department received Olympia Shanghai's response to the Department's supplemental questionnaire dated January 28, 2005. On February 3, 2005, the Department received Huarong's response to the Department's fourth and fifth supplemental questionnaire dated January 21, 2005 and January 27, 2005, respectively. On February 4, 2005, the Department received Olympia Shanghai's response to the Department's February 2, 2005 questionnaire.

Period of Review

POR is February 1, 2003, through January 31, 2004.

Scope of the Antidumping Duty Orders

The products covered by these orders are HFHTs from the PRC, comprising the following classes or kinds of merchandise: (1) Hammers and sledges with heads over 1.5 kg (3.33 pounds); (2) bars over 18 inches in length, track tools and wedges; (3) picks and mattocks; and (4) axes, adzes and similar hewing tools. HFHTs include heads for drilling hammers, sledges, axes, mauls, picks and mattocks, which may or may not be painted, which may or may not be finished, or which may or may not be imported with handles; assorted bar products and track tools including wrecking bars, digging bars and tampers; and steel wood splitting wedges. HFHTs are manufactured through a hot forge operation in which steel is sheared to required length, heated to forging temperature, and formed to final shape on forging equipment using dies specific to the desired product shape and size. Depending on the product, finishing operations may include shot blasting, grinding, polishing and painting, and the insertion of handles for handled products. HFHTs are currently provided for under the following Harmonized Tariff System of the United States (''HTSUS'') subheadings: 8205.20.60, 8205.59.30, 8201.30.00, and 8201.40.60. Specifically excluded from these investigations are hammers and sledges with heads 1.5 kg. (3.33 pounds) in weight and under, hoes and rakes, and bars 18 inches in length and under. The HTSUS subheadings are provided for convenience and Customs purposes. The written description remains dispositive.

The Department has issued five final scope rulings regarding the merchandise covered by these orders: (1) On August 16, 1993, the Department found the ''Max Multi-Purpose Axe,'' imported by the Forrest Tool Company, to be within the scope of the axes/adzes order; (2) on March 8, 2001, the Department found ''18-inch'' and ''24-inch'' pry bars, produced without dies, imported by Olympia Industrial, Inc. and SMC Pacific Tools, Inc., to be within the scope of the bars/wedges order; (3) on March 8, 2001, the Department found the ''Pulaski'' tool, produced without dies by TMC, to be within the scope of the axes/adzes order; (4) on March 8, 2001, the Department found the ''skinning axe,'' produced through a stamping process, imported by Import Traders, Inc., to be within the scope of the axes/adzes order; and (5) on September 22, 2003, the Department found cast picks, produced through a casting process by TMC, to be within the scope of the picks/mattocks order.

Verification

Following the publication of these preliminary results, we intend to verify, as provided in section 782(i) of the Act, sales and cost information submitted by respondents, as appropriate. At that verification, we will use standard verification procedures, including on-site inspection of the manufacturers' facilities, the examination of relevant sales and financial records, and the selection of original source documentation containing relevant information. We plan to prepare verification reports outlining our verification results and place these reports on file in the Central Records Unit, room B099 of the main Commerce building.

Preliminary Partial Rescission

In accordance with 19 CFR 351.213(d)(3), we are preliminarily rescinding these reviews with respect to Ningbo Tiangong Great Star Tools Company, Ltd., Fexian Hualu Tool Company, Ltd., Jinhua Twin-Star Tools Company, Ltd. and ZhangJiagang Tianda Special Hardware Company, Ltd., who reported that they did not sell merchandise subject to any of the four HFHT antidumping orders during the POR.

In accordance with 19 CFR 351.213(d)(3), we are preliminarily rescinding the review of Huarong with respect to the hammers/sledges and picks/mattocks orders, since Huarong reported that they made no shipments of subject hammers/sledges and picks/mattocks.

No one has placed evidence on the record to indicate that Huarong had sales of subject merchandise during the POR. In addition, we examined shipment data furnished by Customs for the producers/exporters identified above and are satisfied that the record does not indicate that there were U.S. entries of subject merchandise from these companies during the POR.

In accordance with 19 CFR 351.213(d)(3), we are preliminarily rescinding the review of Olympia Shanghai with respect to all four orders. We have determined that Olympia Shanghai did not sell merchandise subject to any of the four HFHT antidumping orders during the POR. *Memorandum from James Doyle, Director, Office 9, to Barbara E. Tillman, Acting Deputy Assistant Secretary, 13th Review of Heavy Forged Hand Tools from the People's Republic of China: Preliminary Partial Rescission of Olympia Shanghai,* dated February 28, 2005. In addition, we examined shipment data furnished by Customs for Olympia Shanghai and are satisfied that the record does not indicate that there were U.S. entries of subject merchandise from Olympia Shanghai during the POR.

Separate Rates Determination

The Department has treated the PRC as a non-market economy (''NME'') country in all previous antidumping cases. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the People's Republic of China,* 69 FR 70997 (December 8, 2004). It is the Department's policy to assign all exporters of the merchandise subject to review that are located in NME countries a single antidumping duty rate unless an exporter can demonstrate an absence of governmental control, both in law (*de jure*) and in fact (*de facto*), with respect to its export activities. To establish whether an exporter is sufficiently independent of governmental control to be entitled to a separate rate, the Department analyzes the exporter using the criteria established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) (''Sparklers''), as amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*''). Under the separate rates criteria established in these cases, the Department assigns separate rates to

NME exporters only if they can demonstrate the absence of both *de jure* and *de facto* governmental control over their export activities.

Absence of De Jure Control

Evidence supporting, though not requiring, a finding of the absence of *de jure* governmental control over export activities includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *See Sparklers* at 20589.

In previous reviews of the HFHTs orders, the Department granted separate rates to Huarong and TMC. *See, e.g., Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Reviews, Final Partial Rescission of Antidumping Duty Administrative Reviews, and Determination Not To Revoke in Part,* 69 FR 55581 (September 15, 2004) (''*Final Results of the 12th Review*''). However, it is the Department's policy to evaluate separate rates questionnaire responses each time a Respondent makes a separate rates claim, regardless of whether the Respondent received a separate rate in the past. *See Manganese Metal From the People's Republic of China, Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 63 FR 12441 (March 13, 1998). In the instant reviews, Huarong, and TMC submitted complete responses to the separate rates section of the Department's questionnaire. The evidence submitted in the instant review by these Respondents includes government laws and regulations on corporate ownership, business licences, and narrative information regarding the companies' operations and selection of management. The evidence provided by Huarong and TMC supports a finding of a *de jure* absence of governmental control over their export activities because: (1) There are no controls on exports of subject merchandise, such as quotas applied to, or licenses required for, exports of the subject merchandise to the United States; and (2) the subject merchandise does not appear on any government list regarding export provisions or export licensing.

Absence of De Facto Control

The absence of *de facto* governmental control over exports is based on whether the Respondent: (1) Sets its own export prices independent of the government and other exporters; (2) retains the proceeds from its export sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) has the authority to negotiate and sign contracts and other agreements; and (4) has autonomy from the government regarding the selection of management. *See Silicon Carbide* at 22587; *Sparklers* at 20589; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China,* 60 FR 22544, 22545 (May 8, 1995).

In their questionnaire responses, Huarong and TMC submitted evidence indicating an absence of *de facto* governmental control over their export activities. Specifically, this evidence indicates that: (1) Each company sets its own export prices independent of the government and without the approval of a government authority; (2) each company retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) each company has a general manager, branch manager or division manager with the authority to negotiate and bind the company in an agreement; (4) the general manager is selected by the board of directors or company employees, and the general manager appoints the deputy managers and the manager of each department; and (5) foreign currency does not need to be sold to the government. Therefore, the Department has preliminarily found that Huarong and TMC have established *primae facie* that they qualify for separate rates under the criteria established by *Silicon Carbide* and *Sparklers.*

Use of Facts Available

Section 776(a)(2) of the Act, provides that, if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Furthermore, section 776(b) of the Act states that ''if the administrating authority finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission * * *, in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.'' *See also* Statement of Administrative Action (''SAA'') accompanying the Uruguay Round Agreements Act (''URAA''), H.R. Rep. No. 103–316 at 870 (1994).

In the instant reviews, Huarong and TMC significantly impeded both our ability to complete the review of the bars/wedges order, the hammers/sledges order and the axes/adzes order which we conducted pursuant to section 751 of the Act, and to impose the correct antidumping duties, as mandated by section 731 of the Act. As discussed below, although Huarong and TMC are entitled to separate rates, we preliminarily find that their failure to cooperate with the Department to the best of their ability in responding to the Department's request for information warrant the use of AFA in determining dumping margins for their sales of merchandise subject to certain HFHTs orders.

Huarong

Prior to the instant period under review, Huarong entered into an agreement with a PRC company under which the PRC company would act as an ''agent'' for the vast majority of Huarong's U.S. sales of bars/wedges. Pursuant to this agreement, the ''agent'' supplied Huarong with blank invoices which were on the ''agent's'' letterhead. Huarong filled out these invoices and used them when exporting subject bars/wedges to the United States during the POR. The essential purpose of an invoice is to identify the seller and the quantity and value of a sale, primarily for the buyer, but in certain situations to Customs for proper assessment of AD duties. Permitting an invoice to reflect transactions materially made by another entity frustrates the essential purpose of the invoice. When making ''agent'' sales, Huarong conducted all of the negotiations with the U.S. customer regarding price and quantity, and arranged for the foreign inland freight, international freight, and marine insurance associated with these sales. Additional information regarding these transactions is in the *Memorandum from James Doyle, Director, Office 9, to Barbara E. Tillman, Acting Deputy Assistant Secretary, 13th Review of Heavy Forged Hand Tools from the People's Republic of China: Application of Adverse Facts Available to Shandong Huarong Machinery Co., Ltd.* (''*Huarong AFA Memo*'') dated February 28, 2005.

After reviewing the record of this review, we find that Huarong has continually misrepresented the true nature of its relationship with the ''agent'' during the POR. In its questionnaire responses, Huarong claimed that its relationship with the ''agent'' stemmed from a *bona fide* business arrangement whereby the ''agent'' provided commercial services in connection with Huarong's sales. However, after issuing several supplemental questionnaires on this topic, the Department learned that the ''agent'' had no real commercial involvement in these sales. The ''agent'' was financially compensated by Huarong, not for commercial services normally associated with being a sales agent, but instead, for providing Huarong with blank invoices—essentially selling its identity to Huarong—which Huarong used to make the vast majority of its sales to the United States. *See Huarong AFA Memo.* The result of this misrepresentation was that the invoices did not reflect the identity of the true producer/exporter which impact Customs ability to assess the proper cash deposit rates.

Section 776(a)(2)(C) of the Act states that the Department may, if an interested party ''significantly impedes a proceeding'' under the antidumping statute, use facts otherwise available in reaching the applicable determination. In this case, Huarong's invoice scheme with its ''agent'' has impeded our ability to complete the administrative review, pursuant to section 751 of the Act, and calculate the correct antidumping duties, as required by section 731 of the Act. Therefore, pursuant to section 776(a)(2)(C) of the Act, we find it appropriate to base Huarong's dumping margin for bars/wedges on facts available.

In selecting from among the facts available, pursuant to section 776(b) of the Act, an adverse inference is warranted when the Department has determined that a Respondent has failed to cooperate by not acting to the best of its ability to comply with our request for information. In this case, an adverse inference is warranted because: (1) Huarong misrepresented the nature of its arrangement with the ''agent'' by portraying that company as a *bona fide* agent for the vast majority of Huarong's sales of bars/wedges to the United States; and (2) Huarong participated in a scheme that resulted in circumvention of the antidumping duty order by evading the applicable cash deposit and assessment rates. By engaging in a scheme designed to avoid the Department's calculation, Huarong necessarily failed to cooperate to the best of its ability to respond to the Department's request for information. As a result, Huarong evaded Customs application of accurate and applicable cash deposit and assessment rates. Moreover, section 776(b) of the Act indicates that an adverse inference may include reliance on information derived from the petition, the final determination in the less-than-fair-value (''LTFV'') investigation, any previous administrative review, or any other information placed on the record. As AFA, we are assigning to Huarong's sales of bars/wedges the 139.31 percent PRC-wide rate for bars/wedges published in the most recently completed administrative review of this antidumping order. *See Final Results of the 12th Review* as amended; *see also Huarong AFA Memo.*

TMC

Prior to the instant period under review, TMC entered into agreements with several other PRC companies under which TMC would act as an ''agent'' for these companies' U.S. sales of bars/wedges, hammers/sledges and axes/adzes. Pursuant to these agreements, TMC supplied these companies with blank invoices, with TMC's letterhead. These other companies filled out these invoices and used them when exporting their subject bars/wedges, hammers/sledges and axes/adzes to the United States during the POR. The essential purpose of an invoice is to identify the seller and the quantity and value of a sale, primarily for the buyer, but in certain situations to Customs for proper assessment of AD duties. Permitting an invoice to reflect transactions materially made by another entity frustrates the essential purpose of the invoice. When acting as the ''agent'' for these sales, TMC had no part in negotiating the price and quantity with the U.S. customer, nor in arranging the foreign inland freight, international freight, and marine insurance associated with these sales. Additional information regarding these transactions is in the *Memorandum from James Doyle, Director, Office 9, to Barbara E. Tillman, Acting Deputy Assistant Secretary, 13th Review of Heavy Forged Hand Tools from the People's Republic of China: Application of Adverse Facts Available to Tianjin Machinery Import & Export Corporation* (''*TMC AFA Memo*'') dated February 28, 2005.

After reviewing the record of this review, we preliminarily find that TMC has continually misrepresented the true nature of its relationship with these other companies during the POR. In its questionnaire responses, TMC claimed that its relationship with these other companies stemmed from a *bona fide* business arrangement whereby TMC provided commercial services in connection with the other companies' sales. However, after issuing several supplemental questionnaires on this topic, the Department learned that TMC had no real commercial involvement in these sales. TMC was financially compensated by these other companies, not for commercial services normally associated with being a sales agent, but instead for providing these other companies with blank invoices, which the other companies used to make sales to the United States. *See TMC AFA Memo.* The result of this misrepresentation was that the invoices did not reflect the identity of the true producer/exporter which impact Customs ability to assess the proper cash deposit rates.

In this case, TMC's participation in an invoice scheme with other companies has impeded our ability to identify the true producer/exporter and to complete the administrative review, pursuant to section 751 of the Act, and impose the correct antidumping duties, as required by section 731 of the Act. Therefore, pursuant to section 776(a)(2)(C) of the Act, we find it is appropriate to base TMC's dumping margin for bars/wedges, hammers/sledges and axes/adzes on facts available.

Pursuant to section 776(b) of the Act, an adverse inference is warranted because: (1) TMC misrepresented the nature of its arrangement with these other companies by portraying itself as a *bona fide* sales agent for the majority of the other companies' sales of bars/wedges, hammers/sledges and axes/adzes to the United States; and (2) TMC participated in a scheme that resulted in circumvention of three antidumping duty orders. By engaging in a scheme designed to avoid the Department's calculation, TMC necessarily failed to cooperate to the best of its ability to respond to the Department's request for information. As a result, TMC evaded Customs application of accurate and applicable cash deposit and assessment rates. In accordance with Section 776(b) of the Act, as AFA, we are assigning an AFA rate of 139.31 percent to TMC's sales of merchandise covered by the antidumping duty order on bars/wedges, an AFA rate of 45.42 percent to TMC's sales of merchandise covered by the antidumping duty order on hammers/sledges and an AFA rate of 147.36 percent to TMC's sales of merchandise covered by the antidumping duty order on axes/adzes. *See Final Results of the 12th Review; see also TMC AFA Memo.*

PRC-Wide Entity

As mentioned in the ''Case History'' section above, the Department initiated these administrative reviews of the axes/adzes, bars/wedges, hammers/sledges and picks/mattocks orders with respect to 194 PRC companies. On April 12–14, 2004 and May 5, 2004, we issued a shortened Section A questionnaire to all of the companies identified in the notice of initiation. *See Initiation.* Further, 187 of the 194 companies identified in our notice of initiation did not respond to our shortened Section A questionnaire nor did these companies provide any information demonstrating that they are entitled to a separate rate, therefore they are not entitled to a separate rate. Thus, we consider these companies to be part of the PRC-wide entity. *See Memo to the File from Paul Walker, Case Analyst,* dated February 28, 2005. In accordance with sections 776(a)(2)(A) and (B), as well as section 776(b) of the Act, we are assigning total AFA to the PRC-wide entity.

Section 776(a)(2) of the Act provides that, if an interested party or any other person (A) withholds information that has been requested by the administering authority, or (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act, the Department shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination under this title. Furthermore, under section 782(c) of the Act, a Respondent has a responsibility not only to notify the Department if it is unable to provide the requested information but also to provide a full explanation as to why it cannot provide the information and suggest alternative forms in which it is able to submit the information. Because these 187 companies did not establish their entitlement to a separate rate and failed to provide requested information, we find that, in accordance with sections 776(a)(2)(A) and (B) of the Act, it is appropriate to base the PRC-wide margin in these reviews on facts available. *See, e.g., Final Results of Antidumping Duty Administrative Review for Two Manufacturers/Exporters: Certain Preserved Mushrooms from the People's Republic of China,* 65 FR 50183, 50184 (August 17, 2000).

Section 776(b) of the Act provides that, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of the party as the facts otherwise available. Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* SAA accompanying the URAA, H. Doc. No. 103–316, at 870 (1994). Section 776(b) of the Act authorizes the Department to use, as AFA, information derived from the petition, the final determination in the LTFV investigation, any previous administrative review, or any other information placed on the record.

Section 776(b)(4) of the Act permits the Department to use as AFA information derived in the LTFV investigation or any prior review. Thus, in selecting an AFA rate, the Department's practice has been to assign Respondents who fail to cooperate with the Department's requests for information the highest margin determined for any party in the LTFV investigation or in any administrative review. *See, e.g., Stainless Steel Plate in Coils from Taiwan; Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review,* 67 FR 5789 (February 7, 2002). As AFA, we are assigning to the PRC-wide entity's sales of axes/adzes, bars/wedges, hammers/sledges, and picks/mattocks the rates of 147.36, 139.31, 45.42, and 129.93 percent, respectively. The rates selected for bars/wedges was published in the most recently completed review of the HFHTs orders. *See Final Results of the 12th Review* as amended. The rate selected as AFA for hammers/sledges is from the LTFV investigation. *See Final Results of the 12th Review* as amended. The rates for axes/adzes and picks/mattocks were calculated in the instant review.

Corroboration

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as facts available. Secondary information is defined as ''information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See* SAA accompanying the URAA, H.R. Doc. No. 103–316 at 870 (1994); *see also* 19 CFR 351.308(d).

The SAA further provides that the term ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870. Thus, to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses, as total AFA, a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin. *See Heavy Forged Hand Tools From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Determination Not To Revoke in Part,* 67 FR 57789, 57791 (September 12, 2002).

All of the AFA rates selected above were calculated using information provided during the LTFV investigation, a past administrative review, or the instant review. Furthermore, none of these rates were judicially invalidated. Therefore, we consider these rates to be reliable. *See TMC AFA Memo* and *Huarong AFA Memo* for further details.

When circumstances warrant, the Department may diverge from its standard practice of selecting as the AFA rate the highest rate in any segment of the proceeding. For example, in *Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review,* 61 FR 6812 (February 22, 1996) (''*Flowers from Mexico*''), the Department did not use the highest margin in the proceeding as best information available (the predecessor to facts available) because that margin was based on another company's aberrational business expenses and was unusually high. *See Flowers from Mexico* at 6814. In other cases, the Department has not used the highest rate in any segment of the proceeding as the AFA rate because the highest rate was subsequently discredited, or the facts did not support its use. *See D&L Supply Co.* v. *United States,* 113 F.3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated). None of these unusual circumstances are present with respect to the rates being used here. Moreover, the rates selected for axes/adzes, bars/wedges, and picks/mattocks are the rates currently applicable to the PRC-wide entity.

The rate selected as AFA for the PRC-wide entity's sales of hammers/sledges is from the LTFV investigation. The previous PRC-wide rate for hammers/sledges of 27.71 percent has not encouraged cooperation. A review of the company-specific rates that have been calculated for hammers/sledges in prior

administrative reviews indicates that there are no company-specific rates for hammers/sledges higher than the previous PRC-wide rate of 27.71 percent. The selected rate of 45.42 has relevance because it, and a nearly equivalent rate, were the PRC-wide rates for hammers/sledges during the first six administrative reviews of this order. *See Final Results of the 12th Review; see also F. lli De Cecco di Filippo Fara S. Martino S.p.A.* v. *United States,* 216 F. 3d 1027 (Fed. Cir. 2000) (rate is reasonably accurate with some built-in increase to encourage cooperation).

The rates selected as AFA for the PRC-wide entity's sales of bars/wedges is from the 11th review and was corroborated again in the 12th review. *See Final Results of the 12th Review.*

The rate selected as AFA for the PRC-wide entity's sales of axes/adzes and picks/mattocks wedges are the highest calculated rates in the instant review.

Accordingly, we have corroborated the AFA rates identified above, as required, in accordance with the requirement of section 776(c) of the Act that secondary information be corroborated (*i.e.*, that it have probative value). *See TMC AFA Memo* and *Huarong AFA Memo* for further details.

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base normal value (''NV''), in most circumstances, on the NME producer's factors of production, valued in a surrogate market-economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the factors of production, the Department shall utilize, to the extent possible, the prices or costs of factors of production in one or more market-economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise. The sources of the surrogate values we have used in this investigation are discussed under the ''Normal Value'' Section below.

As discussed in the ''Separate Rates'' section, the Department considers the PRC to be an NME country. The Department has treated the PRC as an NME country in all previous antidumping proceedings. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. We have no evidence suggesting that this determination should be changed. Therefore, we treated the PRC as an NME country for purposes of these reviews and calculated NV by valuing the FOP in a surrogate country.

The Department determined that India, Indonesia, Sri Lanka, Philippines, Morocco and Egypt are countries comparable to the PRC in terms of economic development. *See Memorandum from Ron Lorentzen, Office of Policy, Acting Director, to James C. Doyle, Program Manager: Antidumping Duty Administrative Review of Heavy Forged Hand Tools (''Hand Tools'') from the People's Republic of China (PRC): Request for a List of Surrogate Countries,* dated July 15, 2004. We select an appropriate surrogate country based on the availability and reliability of data from the countries. *See Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process* (''*Policy Bulletin*''), dated March 1, 2004. In this case, we have found that India is a significant exporter of comparable merchandise, merchandise classified under HTSUS subheadings 8205.20, 8205.59, 8201.30, and 8201.40, the subheadings applicable to subject hand tools, and is at a similar level of economic development pursuant to 733(c)(4) of the Act. *See Memorandum from Paul Walker, Case Analyst, through Edward C. Yang, Office Director, Office IX, to The File, 13th Administrative Review of Heavy Forged Hand Tools from the People's Republic of China (''PRC''): Selection of a Surrogate Country* (''*Surrogate Country Memo*''), dated August 13, 2004. Since our issuance of the *Surrogate Country Memo*, we have not received comments from interested parties.

U.S. Price

The Department is calculating dumping margins for the picks/mattocks order for TMC and the axes/adzes order for Huarong. There is no record evidence that these companies engaged in the ''agent'' sale scheme as described above with respect to these sales. In accordance with section 772(a) of the Act, the Department calculated export prices (''EPs'') for sales to the United States for the participating Respondents receiving calculated rates because the first sale to an unaffiliated party was made before the date of importation and the use of constructed EP (''CEP'') was not otherwise warranted. We calculated EP based on the price to unaffiliated purchasers in the United States. In accordance with section 772(c) of the Act, as appropriate, we deducted from the starting price to unaffiliated purchasers foreign inland freight, brokerage and handling, international freight, and marine insurance. For the Respondents receiving calculated rates, each of these services was either provided by a NME vendor or paid for using a NME currency, with one exception. For international freight, provided by a market economy provider and paid is U.S. dollars, we used the actual cost per kg. of the freight. For international freight, provided by a NME provider, we used a surrogate value. Thus, we based the deduction for these movement charges on surrogate values. *See* the ''Normal Value'' section of this notice for details regarding these surrogate values.

We valued brokerage and handling and marine insurance using the rates reported in the public version of the questionnaire response in *Stainless Steel Wire Rod From India; Final Results of Administrative Review,* 63 FR 48184 (September 9, 1998) (''*India Wire Rod*''). The source used to value foreign inland freight is identified below in the ''Normal Value'' section of this notice. *See Memorandum from Paul Walker, Case Analyst, through James Doyle, Director, Office 9, to the File, 13th Administrative Review of Heavy Forged Hand Tools from the People's Republic of China: Selection of Factor Values for the Preliminary Results* (''*Surrogate Values Memo*''), dated February 28, 2005.

To account for inflation or deflation between the time period that the freight, brokerage and handling, and insurance rates were in effect and the POR, we adjusted the rates using the wholesale price index (''WPI'') for India from the International Monetary Fund (''IMF'') publication, International Financial Statistics. *See Surrogate Values Memo.*

Normal Value

In accordance with section 773(c) of the Act, we calculated NV based on factors of production (''FOP'') reported by the Respondents for the POR. To calculate NV, we valued the reported FOP by multiplying the per-unit factor quantities by publicly available Indian surrogate values. In selecting surrogate values, we considered the quality, specificity, and contemporaneity of the available values. As appropriate, we adjusted the value of material inputs to account for delivery costs. Where appropriate, we increased Indian surrogate values by surrogate inland freight costs. We calculated these inland freight costs using the reported distances from the PRC port to the PRC factory, or from the domestic supplier to the factory. This adjustment is in accordance with the United States Court of Appeals for the Federal Circuit's (''CAFC'') decision in *Sigma Corp.* v.

United States, 117 F. 3d 1401, 1407–1408 (Fed.Cir. 1997). For those values not contemporaneous with the POR, we adjusted for inflation or deflation using the appropriate wholesale or WPI published in the IMF's International Financial Statistics. Consistent with the *Final Determination of Sales at Less than Fair Value: Certain Automotive Replacement Glass Windshields From the People's Republic of China,* 67 FR 6482 (February 12, 2002) and accompanying Issues and Decision Memorandum at Comment 1, we excluded from the surrogate country import data used in our calculations imports from Korea, Thailand and Indonesia due to subsidies. *See Surrogate Values Memo.*

The Department prefers to rely upon the Respondents' HTS classification for its inputs during the POR. On July 26, 2004, the Department requested factor value data from all interested parties by August 23, 2004. No parties submitted comments. On December 14, 2004 the Department again made a request for factor value data from interested parties, however, only the Petitioner responded to this request. In addition to using information provided in the Petitioner's comments, the Department conducted its own search for the HTS heading and article description which best captured the factors of production described by TMC and Huarong.

We valued direct materials used to produce HFHTs: Steel, handles, paint, labels and anti-rust oil, using USD/kilogram value of imports that entered India during the period January 2003 through December 2003, based upon data obtained from the World Trade Atlas. *See Surrogate Values Memo* at Exhibits 3 & 4.

We valued coal to produced HFHTs using USD/kilogram value of imports that entered India during the period January 2003 through December 2003, based upon data obtained from the World Trade Atlas. *See Surrogate Values Memo* at Exhibit 5. We valued electricity using rates from *Key World Energy Statistics 2003,* published by the International Energy Agency (''IEA''). We adjusted the electricity rates for the POR by using the WPI inflator. *See Surrogate Values Memo* at Exhibit 5. We have used previous editions of this report in other antidumping proceedings. *See, e.g., Notice of Final Results and Rescission, in Part, of the Antidumping Duty Administrative Review: Petroleum Wax Candles From the People's Republic of China Monday,* 69 FR 12121, 12126 (March 15, 2004).

Section 351.408(c)(3) of the Department's regulations requires the use of a regression-based wage rate. Therefore, to value the labor input, the Department used the regression-based wage rate for China published by Import Administration on our website. The source of the wage rate data is the *Yearbook of Labour Statistics 2001,* published by the International Labour Office (''ILO''), (Geneva: 2001), Chapter 5B: Wages in Manufacturing. *See* the Import Administration Web site: *http://ia.ita.doc.gov/wages/01wages/01wages.html.*

To value packing materials, the Department used Indian Import Statistics published by World Trade Atlas. *See Surrogate Values Memo* at Exhibit 7.

Our treatment of by-products is in accordance with the Department's practice. ''We allowed recovery/by-product credits where the company provided information demonstrating that the recoveries/by-products were sold and/or reused in the production process.'' *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Steel Flat Products from the Peoples' Republic of China,* 66 FR 49632 (September 28, 2001) and accompanying Issues and Decision Memo at Comment 3. To value the by-products, the Department used a surrogate value for scrap rail using Indian Import Statistics published by World Trade Atlas. *See Surrogate Values Memo* at Exhibit 6.

Whenever possible, the Department will use producer-specific data to calculate financial ratios. Unlike industry-specific data, which tends to be broader in terms of merchandise included, product-specific data obtained from specific producers of merchandise identical or similar to the subject merchandise pertains directly to the subject merchandise. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form From the People's Republic of China,* 66 FR 49345 (September 27, 2001), and accompanying Issues and Decision Memorandum at Comment 3. However, when the Department and the parties are unable to obtain surrogate information for valuing overhead, selling, general and administrative (''SG&A'') expenses, and profit from manufacturers of merchandise identical or comparable to the subject merchandise, the Department must rely upon surrogate information derived from broader industry groupings. *See Notice of Final Results of New Shipper Review: Petroleum Wax Candles from the People's Republic of China,* 67 FR 41395 (June 18, 2002), and accompanying Issues and Decision Memorandum, at Comment 6.

In the instant reviews, neither the Petitioner nor the Respondents have placed any financial statements on the record. Moreover, the Department has been unable to locate public financial statements specific to hand tools producers in India. Therefore, the Department is using broader financial data from the RBI Bulletin to calculate the financial ratios. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China,* 68 FR 7765 (February 18, 2003) and the accompanying Issues and Decision Memorandum at Comment 4; *Final Results of Antidumping New Shipper Review: Potassium Permanganate from the People's Republic of China,* 66 FR 46775 (September 7, 2001), and the accompanying Issues and Decision Memorandum, at Comment 20; *Notice of Initiation of Antidumping Duty Investigation: Lawn and Garden Steel Fence Posts From the People's Republic of China,* 67 FR 37388, 37391 (May 29, 2002), and the accompanying Issues and Decision Memorandum, at Comment 6.

Therefore, we derived ratios for factory overhead, SG&A expenses, and profit using information reported for 2,031 Public Limited Companies for the period 2002–2003, in the Reserve Bank of India Bulletin for August 2004. From this information, we were able to calculate factory overhead as a percentage of direct materials, labor, and energy expenses; SG&A expenses as a percentage of the total cost of manufacturing (''TOTCOM''); and profit as a percentage of the sum of TOTCOM and SG&A expenses. *See Surrogate Values Memo* at Exhibit 9.

We used rates used by the Department in the *Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China,* 65 FR 33805 (May 25, 2000) to value truck and rail freight services incurred to transport direct materials, packing materials, and coal from the suppliers of the inputs to the factories producing HFHTs. *See Surrogate Value Memo* at Exhibit 8.

Preliminary Results of the Review

As a result of our reviews, we preliminarily find that the following margins exist for the period February 1, 2003 through January 31, 2004:

Manufacturer/exporter	Weighted-average margin (percent)
Heavy Forged Hand Tools from the PRC: Axes/Adzes	
TMC	147.36
Huarong	147.36
PRC-Wide Rate	147.36
Heavy Forged Hand Tools from the PRC: Hammers/Sledges	
TMC	45.42
PRC-Wide Rate	45.42
Heavy Forged Hand Tools from the PRC: Picks/Mattocks	
TMC	129.93
PRC-Wide Rate	129.93
Heavy Forged Hand Tools from the PRC: Bars/Wedges	
TMC	139.31
Huarong	139.31
PRC-Wide Rate	139.31

Public Comment

The Department will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within ten days of the date of announcement of the preliminary results. An interested party may request a hearing within 30 days of publication of the preliminary results. *See* 19 CFR 351.310(c). Interested parties may submit written comments (case briefs) within 30 days of publication of the preliminary results and rebuttal comments (rebuttal briefs), which must be limited to issues raised in the case briefs, within five days after the time limit for filing case briefs. *See* 19 CFR 351.309(c)(1)(ii) and 19 CFR 351.309(d). Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Further, the Department requests that parties submitting written comments provide the Department with a diskette containing the public version of those comments. Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, the Department will issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days of publication of the preliminary results. The assessment of antidumping duties on entries of merchandise covered by this review and future deposits of estimated duties shall be based on the final results of this review.

Assessment Rates

Upon completion of these administrative reviews, the Department will determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), for the Respondents receiving calculated dumping margins, we calculated importer-specific per-unit duty assessment rates based on the ratio of the total amount of the dumping duties calculated for the examined sales to the total quantity of those same sales. These importer-specific per-unit rates will be assessed uniformly on all entries of each importer that were made during the POR. In accordance with 19 CFR 351.106(c)(2), we will instruct Customs to liquidate without regard to antidumping duties any entries for which the importer-specific assessment rate is *de minimis* (*i.e.*, less than 0.5 percent *ad valorem*). For all shipments of subject merchandise for the four antidumping orders covering HFHTs from the PRC, exported by the Respondents and imported by entities not identified by the Respondents in their questionnaire responses, we will instruct Customs to assess antidumping duties at the cash deposit rate in effect on the date of the entry. Lastly, for the Respondents receiving dumping rates based upon AFA, the Department, upon completion of these reviews, will instruct Customs to liquidate entries according to the AFA *ad valorem* rate. The Department will issue appraisement instructions directly to Customs upon the completion of the final results of these administrative reviews.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the final results of these administrative reviews for all shipments of HFHTs from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies named above will be the rates for those firms established in the final results of these administrative reviews; (2) for any previously reviewed or investigated PRC or non-PRC exporter, not covered in these reviews, with a separate rate, the cash deposit rate will be the company-specific rate established in the most recent segment of these proceedings; (3) for all other PRC exporters, the cash deposit rates will be the PRC-wide rates established in the final results of these reviews; and (4) the cash deposit rate for any non-PRC exporter of subject merchandise from the PRC who does not have its own rate will be the rate applicable to the PRC exporter that supplied the non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

Notification to Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(I)(1) of the Act.

Dated: February 28, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–1017 Filed 3–9–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Fagatele Bay National Marine Sanctuary Advisory Council

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice and request for application.

SUMMARY: The Fagatele Bay National Marine Sanctuary is seeking applicants for the following vacant seats on its Sanctuary Advisory Council (Council): Research (voting), education (voting), fishing/Western Pacific Fisheries Management Council member (voting), ocean recreation or ocean centered eco-tourism (voting), and community-at-large, with preference to Futiga Village (voting). Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy

regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the Sanctuary. Applicants who are chosen as members should expect to serve 2-year terms, pursuant to the Council's Charter.

DATES: Applications are due by March 31, 2005.

ADDRESSES: Application kits may be obtained from Nancy Daschbach and Fagatele Bay National Marine Sanctuary Program PO Box 4318 Pago Pago AS 96799. Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Nancy Daschbach, PO Box 4318 Pago Pago AS 96799, phone number (684) 633–633–7354, and *nancy.daschbach@noaa.gov*.

Authority: 16 U.S.C. 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: March 4, 2005.

Daniel J. Basta,

Director, National Marine Sanctuary Program, National Ocean Services, National Oceanic and Atmospheric Administration.

[FR Doc. 05–4666 Filed 3–9–05; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030305B]

Notice of Intent to Hold Public Information Meetings on a Draft Environmental Impact Statement and Conservation Plan

AGENCY: National Marine Fisheries Service (NMFS), National Ocranic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Intent to hold public information meetings.

SUMMARY: Notice is hereby given pursuant to the National Environmental Policy Act, as amended (NEPA), that the National Marine Fisheries Service and the Fish and Wildlife Service (known hereafter as the Services) intend to hold public information meetings on a Draft Environmental Impact Statement (DEIS) and Conservation Plan for forest practices in the State of Washington. These documents were announced in the **Federal Register** for a 90–day public comment period. Representatives from the Services and the State of Washington will be at the public information meetings to answer questions about the documents and to provide further information to interested parties.

DATES: See **SUPPLEMENTARY INFORMATION** section for meeting dates.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for meeting locations.

FOR FURTHER INFORMATION CONTACT: Sally Butts, (360) 753–5832.

SUPPLEMENTARY INFORMATION: Written public comments will be accepted at the public information meetings. Attendees may submit prior written comments at the public meetings, or a blank form will be available for attendees to write comments during the meetings. Please see the **Federal Register** for standard, electronic, and facsimile contact information to submit written public comments if not attending one of the public information meetings The public information meetings will be held from 4 p.m. 7p.m., or until business is concluded. The public information meeting dates and locations are:

March 28, 2005, Red Lion Hotel, Port Angeles, WA.

March 29, 2005, Squalicum Boat House, Bellingham, WA.

March 30, 2005, Sheraton Hotel, Seattle, WA.

April 4, 2005, Red Lion Hotel, Kelso, WA.

April 5, 2005, Gwinwood Christian Conference Grounds and Westwood Retreat Center, Olympia, WA.

April 6, 2005, Red Lion Yakima Center, Yakima, WA.

April 12, 2005, Double Tree Hotel, Spokane, WA.

April 13, 2005, Ag and Trade Center, Colville, WA.

Any changes to meeting times or locations will be noted on the State of Washington's Department of Natural Resources Forest Practices Habitat Conservation Plan (Federal Assurances Program) website, *http://www.dnr.wa.gov/htdocs/agency/federalassurances/*.

Dated: March 4, 2005.

Maria Boroja,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–4755 Filed 3–9–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030705A]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Habitat/MPA/Ecosystem Oversight Committee in March, 2005 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on March 28, 2005. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meeting will be held in Newport, RI.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465–0492. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Time and Location of Meeting

Monday, March 28, 2005 at 12:30 p.m. - Habitat/MPA/Ecosystem Oversight Committee Meeting.

Location: Hotel Viking, One Bellevue Avenue, Newport, RI 02840; telephone: (401) 847–3300.

The Committee will meet to hear presentations on topics relating to Ecosystem Approaches to Fisheries Management. Speakers include: Staff (Integrating Ecosystem Approaches into New England fisheries management); Dr. Steve Murawski, NOAA Fisheries Director, Office of Science and Technology (An Overview of Ecosystem Approaches to Fishery Management) and Dr. Kristy Wallmo, NOAA Fisheries- Economics and Social Sciences (An Overview of the Ecosystem Management/Social Science Survey).

In addition, the Committee will provide input on various tasks toward completing the Ecosystems Approaches to Fishery Management Pilot Project and address other topics at their discretion.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: March 7, 2005.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E5–1013 Filed 3–9–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0065]

Federal Acquisition Regulation; Submission for OMB Review; Overtime

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0065).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning overtime. A request for public comments was published at 69 FR 77235 on December 27, 2004. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before April 11, 2005.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VIR), 1800 F Streets, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0065, Overtime, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Kimberly Marshall, Contract Policy Division, GSA (202) 219–0986.

SUPPLEMENTARY INFORMATION:

A. Purpose

Federal solicitations normally do not specify delivery schedules that will require overtime at the Government's expense. However, when overtime is required under a contract and it exceeds the dollar ceiling established during negotiations, the contractor must request approval from the contracting officer for overtime. With the request, the contractor must provide information regarding the need for overtime.

B. Annual Reporting Burden

Respondents: 1,270.

Responses Per Respondent: 1.

Total Responses: 1,270.

Hours Per Response: .25.

Total Burden Hours: 318.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VIR), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0065, Overtime, in all correspondence.

Dated: March 4, 2005

Rodney P. Lantier

Director, Contract Policy Division.

[FR Doc. 05–4717 Filed 3–9–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0035]

Federal Acquisition Regulation; Submission for OMB Review; Claims and Appeals

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning claims and appeals. A request for public comments was published at 70 FR 4096 on January 28, 2005. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before April 11, 2005.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0035, Claims and Appeals, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Kimberly Marshall, Contract Policy Division, GSA (202) 219–0986.

SUPPLEMENTARY INFORMATION:

A. Purpose

It is the Government's policy to try to resolve all contractual issues by mutual agreement at the contracting officer's level without litigation. Contractor's claims must be submitted in writing to the contracting officer for a decision. Claims exceeding $100,000 must be accompanied by a certification that (1) the claim is made in good faith; (2) supporting data are accurate and complete; and (3) the amount requested accurately reflects the contract adjustment for which the contractor believes the Government is liable. Contractors may appeal the contracting officer's decision by submitting written appeals to the appropriate officials.

B. Annual Reporting Burden

Respondents: 4,500.
Responses Per Respondent: 3.
Annual Responses: 13,500.
Hours Per Response: 1.
Total Burden Hours: 13,500.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VIR), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0035, Claims and Appeals, in all correspondence.

Dated: March 4, 2005

Rodney P. Lantier

Director, Contract Policy Division.

[FR Doc. 05–4719 Filed 3–9–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation; 2005 FAR Reissue Posted to FAR Website for Download and Use

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: This notice advises users that the 2005 Federal Acquisition Regulation (FAR) Reissue will be available for downloading and use on March 18, 2005, at *http://www.acqnet.gov/far.* Periodically, the FAR is reissued because of administrative necessity, *i.e.*, headers and change bars are removed. A FAR reissue does not revise the FAR language; however, the flow of the context changes. Therefore, users are required to refer to this latest version (current through FAC 2001–27). The FAR is available in HTML and PDF formats. Users intending to print the FAR can refer to the downloadable, print-only version in PDF.

DATES: The FAR Reissue will be available on the website, *http://www.acqnet.gov/far*, on March 18, 2005.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755.

SUPPLEMENTARY INFORMATION: In addition to providing free access to the FAR in HTML and PDF formats, the GSA FAR Website also provides electronic copies of the Federal Acquisition Circulars, **Federal Register** documents pertaining to final, interim, and proposed rules, and public comments.

Dated: March 7, 2005.

Ralph De Stefano,

Director, Regulatory and Federal Assistance Division.

[FR Doc. 05–4697 Filed 3–9–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Director, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 9, 2005.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 4, 2005.

Jeanne Van Vlandren,

Director, Regulatory Information Management Services, Office of the Chief Information Officer.

Institute of Education Sciences.
Type of Review: Revision.
Title: Public Libraries Survey, 2005–2007.
Frequency: Annually.
Affected Public: State, local, or tribal gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 56.
Burden Hours: 2,520.
Abstract: Mandated under Pub. L. 107–279, this survey collects annual descriptive data on the universe of public libraries in the U.S. and the Outlying Areas. Information such as public service hours per year, circulation of library books, etc., number of librarians, population of legal service area, expenditures for library collection, staff salary data, and access to technology are collected.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2708. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet

address *OCIO_RIMG@ed.gov* or faxed to (202) 245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–4694 Filed 3–9–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 11, 2005.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 4, 2005.

Jeanne Van Vlandren,

Director, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Postsecondary Education.

Type of Review: Extension.

Title: The Program for North American Mobility in Higher Education.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 20.

Burden Hours: 400.

Abstract: The Program for North American Mobility in Higher Education is a competition grant program which supports institutional cooperation and student exchange among the countries of the U.S., Mexico, and Canada. Funding supports the participation of U.S. institutions and students in trilateral consortia of institutions of higher education. Funding will be multi-year, with projects lasting up to four years.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2701. When you access the information collection, click on ''Download Attachments ''to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–4695 Filed 3–9–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 9, 2005.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the

Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 7, 2005.

Angela C. Arrington,

Director, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Institute of Education Sciences.

Type of Review: Revision.

Title: State Library Agencies Survey, 2005–2007.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 51.

Burden Hours: 561.

Abstract: State library agencies (StLAs) are the official agencies of each state charged by state law with the extension and development of public library services throughout the state. The purpose of this survey is to provide state and federal policymakers with information about StLAs, including their governance, allied governance, allied operations, development services to libraries and library systems, support of electronic information networks and resources, number and types of outlets, and direct services to the public.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2708. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–4696 Filed 3–9–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Safe and Drug-Free Schools; Overview Information; Safe Schools/Healthy Students; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

Catalog of Federal Domestic Assistance (CFDA) Number: 84.184L.

DATES: *Applications Available:* March 10, 2005.

Deadline for Transmittal of Applications: April 29, 2005.

Deadline for Intergovernmental Review: June 29, 2005.

Eligible Applicants: Local educational agencies (LEAs) or consortia of LEAs that have not received funds or services under the Safe Schools/Healthy Students (SS/HS) initiative during any previous fiscal year.

Estimated Available Funds: $74,800,000.

Estimated Range of Awards: Up to $1,000,000 per year for LEAs or consortia in rural areas and Bureau of Indian Affairs (BIA) schools; up to $2,000,000 per year for LEAs or consortia in suburban areas; and up to $3,000,000 per year for LEAs or consortia in urban areas.

Estimated Average Size of Awards: $2,000,000 per year.

Maximum Award: We will reject any application that proposes a budget that exceeds the maximum amount established for its defined urbanicity. The maximum amount for SS/HS funds is $3 million for urban LEAs for a 12-month period; $2 million for suburban LEAs for a 12-month period; and $1 million for rural LEAs and BIA schools for a 12-month period. To determine urbanicity and the maximum amount they are eligible to apply for, all applicants except BIA schools must use the district locale code on the National Public School and School District Locator Web site (available online at *http://www.nces.ed.gov/ccd/districtsearch*) and the definitions established in the notice of final priority, selection criteria, requirements, and definitions for the SS/HS program published in the **Federal Register** on May 28, 2004 (69 FR 30756). A BIA school's request must not exceed $1 million.

Estimated Number of Awards: 40.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: This program provides Federal financial assistance to LEAs to implement an integrated, comprehensive community-wide plan designed to create safe and drug-free schools and promote prosocial skills and healthy childhood development in youth.

Priority: This priority is from the notice of final priority, selection criteria, requirements, and definitions, for this program, published in the **Federal Register** on May 28, 2004 (69 FR 30756).

Absolute Priority: For FY 2005 this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority supports the projects of LEAs proposing to implement an integrated, comprehensive community-wide plan designed to create safe and drug-free schools and promote prosocial skills and healthy childhood development in youth. Plans must focus activities, curricula, programs, and services in a manner that responds to all of the following six elements —

Element One—Safe school environment—**Note:** No more than 10 percent of the total budget for each year may be used to support costs associated with (1) security equipment and personnel, and (2) minor remodeling of school facilities to improve school safety;

Element Two—Alcohol and other drugs and violence prevention and early intervention programs;

Element Three—School and community mental health preventive and treatment intervention services;

Element Four—Early childhood psychosocial and emotional development programs;

Element Five—Supporting and connecting schools and communities; and

Element Six—Safe school policies.

Program Authority: Safe and Drug-Free Schools and Communities Act (20 U.S.C. 7131); Public Health Service Act (42 U.S.C. 290aa); and Juvenile Justice and Delinquency Prevention Act (42 U.S.C. 5614(b)(4)(e) and 5781 *et seq.*).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 97, 98, 99, and 299. (b) The notice of final priority, selection criteria, requirements, and definitions for this program, published in the **Federal Register** on May 28, 2004 (69 FR 30756).

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $74,800,000.

Estimated Range of Awards: Up to $1,000,000 per year for LEAs or consortia in rural areas and BIA schools;

up to $2,000,000 per year for LEAs or consortia in suburban areas; and up to $3,000,000 per year for LEAs or consortia in urban areas.

Estimated Average Size of Awards: $2,000,000 per year.

Maximum Award: We will reject any application that proposes a budget that exceeds the maximum amount established for its defined urbanicity. The maximum amount for SS/HS funds is $3 million for urban LEAs for a 12-month period; $2 million for suburban LEAs for a 12-month period; and $1 million for rural LEAs and BIA schools for a 12-month period. To determine urbanicity and the maximum amount they are eligible to apply for, all applicants except BIA schools must use the district locale code on the National Public School and School District Locator Web site (available online at *http://www.nces.ed.gov/ccd/districtsearch*) and the definitions established in the notice of final priority, selection criteria, requirements, and definitions for the SS/HS program published in the **Federal Register** on May 28, 2004 (69 FR 30756). A BIA school's request must not exceed $1 million.

Estimated Number of Awards: 40.

Note: The Department is not bound by any estimates in this notice.

Project Period: 36 months.

III. Eligibility Information

1. *Eligible Applicants:* LEAs or consortia of LEAs that have not received funds or services under the Safe Schools/Healthy Students (SS/HS) initiative during any previous fiscal year.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching

3. *Other:* The applicant must include in its application two memoranda of agreement demonstrating the commitment of the required SS/HS partners. Two agreements must be signed by the required partners (as described in paragraphs (a) and (b)) and dated no earlier than six months prior to the SS/HS application deadline. Applicants must also include information in the application that supports the selection of the identified local law enforcement partner and juvenile justice partner and describes how those partners' activities will support and be integrated in the SS/HS strategy. Applicants must contact their State Department of Mental Health to identify the relevant local public mental health authority. Mental health entities that have no legal authority in the administrative oversight of the delivery of mental health services are not acceptable as the sole mental health partner. Each SS/HS application must include the local public mental health authority as a partner. (The local public mental health authority is not required to provide mental health services to the target population but must provide administrative control or oversight of the delivery of mental health services.)

(a) The first of these two agreements is the Memorandum of Agreement for the SS/HS Partners. This agreement must contain the signatures of the school superintendent and authorized representatives for the local public mental health authority and local law enforcement and juvenile justice agencies. This agreement must include the following information: A mission statement for the SS/HS partnership; the goals and objectives of the partnership; desired outcomes for the partnership; a description of how information will be shared among partners; and a description of the roles and responsibilities of each partner. Applicants submitting as a consortium of LEAs must demonstrate partnership with the relevant local law enforcement agency (or agencies), public mental health authority (or authorities) and juvenile justice agency (or agencies) for each of the participating LEAs in the consortium. Applicants must indicate those instances where a local law enforcement agency, public mental health authority, or juvenile justice agency has authority or jurisdiction for one or more of the participating LEAs in the consortium.

(b) The second of these two agreements is the Memorandum of Agreement for Mental Health Services. This agreement must contain the signatures of the school superintendent and the authorized representative of the local public mental health authority. The local public mental health authority must agree to provide administrative control and/or oversight of the delivery of mental health services. This agreement also must state procedures to be used for referral, treatment, and follow-up for children and adolescents with serious mental health problems. Applicants submitting as a consortium of LEAs must demonstrate partnership with the relevant public mental health authority (or authorities) for each of the participating LEAs in the consortium. Applicants must indicate those instances where a local public mental health authority has authority/jurisdiction for one or more of the participating LEAs in the consortium.

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): (877) 433–7827. Fax: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): (877) 576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.184L.

You also may access the application package electronically at the following address: *http://www.ed.gov/programs/dvpsafeschools/applicant.html.*

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. An application's narrative must be limited to the equivalent of no more than 40 pages and must adhere to the following standards:

- A ''page'' is 8.5″ by 11″, on one side only, with 1'' margins at the top, bottom, and both sides.
- All text in the application narrative must be double spaced (no more than three lines per vertical inch) excluding titles, headings, footnotes, quotations, references, captions, text in charts, tables, figures and graphs.
- Text must be presented in a 12-point Courier New font.
- All pages must be consecutively numbered using the style 1 of 40, 2 of 40, etc.

The page limit does not apply to the cover sheet, project abstract, budget forms and worksheets, or the required attachments.

Our reviewers will not read any pages of your application that—

- Exceed the page limit if you apply these standards; or
- Exceed the equivalent of the page limit if you apply other standards.

3. *Submission Dates and Times:* Applications Available: March 10, 2005.

Deadline for Transmittal of Applications: April 29, 2005.

Applications for grants under this program must be submitted by mail or hand delivery. For information (including dates and times) about how to submit your application by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: June 29, 2005.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* No less than 7 percent of a grantee's budget for each year may be used to support costs associated with local evaluation activities. No more than 10 percent of the total budget for each year may be used to support costs associated with (1) security equipment and personnel, and (2) minor remodeling of school facilities to improve school safety. We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this program must be submitted in paper format by mail or hand delivery.

a. *Submission of Applications by Mail.* If you submit your application by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: CFDA 84.184L, 400 Maryland Avenue, SW, Washington, DC 20202–4260; or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: CFDA 84.184L, 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of the address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

b. *Submission of Application by Hand Delivery.* If you submit your application by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education, Application Control Center, Attention: CFDA 84.184L, 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are in the application package.

2. *Review and Selection Process:* Additional factors we consider in selecting an application for an award are: (1) geographic distribution and diversity of activities addressed by the projects; and (2) equitable distribution of grants among urban, suburban, and rural LEAs.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* If funded you are expected to submit, semi-annually, a performance report, which includes reporting on expenditures, as specified by the Secretary in 34 CFR 75.720. You are also expected to collect data on the key Government Performance and Results Act (GPRA) performance measures for this program and report those data annually to the Department. At the end of your project period, you must submit a final performance report that includes financial and evaluation information, as directed by the Secretary.

4. *Performance Measures:* Under the GPRA, we have developed four measures for evaluating the overall effectiveness of the SS/HS initiative: (1) The percentage of Safe Schools/Healthy Students grant sites that experience a decrease in the number of violent incidents at schools during the 3-year period; (2) The percentage of Safe Schools/Healthy Students grant sites that experience a decrease in substance abuse during the 3-year period; (3) The percentage of Safe Schools/Healthy Students grant sites that improve school attendance during the 3-year period; and (4) The percentage of SS/HS grant sites that increase mental health services to students and families during the 3-year grant period.

These measures constitute the Department's indicators of success for this initiative. Consequently, applicants for a grant under this program are advised to give careful consideration to these four measures in conceptualizing the design, implementation, and evaluation for their proposed project.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Karen Dorsey, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E336, Washington, DC 20202–6450. Telephone: (202) 708–4674 or by e-mail: *Karen.Dorsey@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

You may also view this document in text or PDF at the following Web site: *http://www.ed.gov/programs/dvpsafeschools/applicant.html.*

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*

Dated: March 7, 2005.

Deborah A. Price,

Assistant Deputy Secretary for Safe and Drug-Free Schools.

[FR Doc. 05–4741 Filed 3–9–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Rehabilitation Training: Rehabilitation Long-Term Training—Comprehensive System of Personnel Development; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

Catalog of Federal Domestic Assistance (CFDA) Number: 84.129W.

DATES: *Applications Available:* March 10, 2005.

Deadline for Transmittal of Applications: April 11, 2005.

Deadline for Intergovernmental Review: June 8, 2005.

Eligible Applicants: States and public or nonprofit agencies and organizations, including Indian tribes and institutions of higher education.

Estimated Available Funds: $1,200,000.

Estimated Range of Awards: $190,000—$210,000.

Estimated Average Size of Awards: $200,000.

Estimated Number of Awards: 6.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Rehabilitation Long-Term Training program provides financial assistance for projects that provide basic or advanced training leading to an academic degree in areas of personnel shortages, provide a specified series of courses or program of study leading to award of a certificate in areas of personnel shortages, or provide support for medical residents enrolled in residency training programs in the specialty of physical medicine and rehabilitation.

Priority: This priority is from the notice of final priority for this program, published in the **Federal Register** on October 16, 1998 (63 FR 55764).

Absolute Priority: For FY 2005 this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is: *Comprehensive System of Personnel Development.*

Projects must—

(1) Provide training leading to academic degrees or academic certificates to current vocational rehabilitation (VR) counselors, including counselors with disabilities, ethnic minorities, and those from diverse backgrounds, toward meeting designated State unit (DSU) personnel standards required under section 101(a)(7) of the Rehabilitation Act of 1973, as amended, commonly referred to as the Comprehensive System of Personnel Development (CSPD);

(2) Address the academic degree and academic certificate needs specified in the CSPD plans of those States with which the project will be working; and

(3) Develop innovative approaches (*e.g.*, distance learning, competency-based programs, and other methods) that would maximize participation in, and the effectiveness of, project training.

Multi-State projects and projects that involve consortia of institutions and agencies are also authorized, although other projects will be considered.

The regulations in 34 CFR 386.31 require that a minimum of 75 percent of project funds be used to support student scholarships and stipends. The regulations also provide that the Secretary may waive this requirement under certain circumstances, including new training programs.

Finally, the Secretary intends to approve a wide range of approaches for providing training and different levels of funding, based on the quality of individual projects. The Secretary takes these factors into account in making grants under this priority.

Program Authority: 29 U.S.C. 772.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, and 99. (b) The regulations for this program in 34 CFR parts 385 and 386.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $1,200,000.

Estimated Range of Awards: $190,000—$210,000.

Estimated Average Size of Awards: $200,000.

Estimated Number of Awards: 6.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States and public or nonprofit agencies and organizations, including Indian tribes and institutions of higher education.

2. *Cost Sharing or Matching:* Cost sharing of at least 10 percent of the total cost of the project is required of grantees under the Rehabilitation Training program (34 CFR 386.30).

Note: Under 34 CFR 75.562(c), an indirect cost reimbursement on a training grant is limited to the recipient's actual indirect costs, as determined by its negotiated indirect cost rate agreement, or eight percent of modified total direct cost base, whichever amount is less. Indirect costs in excess of the eight percent limit may not be charged directly, used to satisfy matching or cost-sharing requirements, or charged to another Federal award.

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. Fax: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.129W.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 45 pages, using the following standards:

• A ''page'' is 8.5'' × 11'', on one side only, with 1'' margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

• You apply these standards and exceed the page limit; or

• You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times: Applications Available:* March 10, 2005.

Deadline for Transmittal of Applications: April 11, 2005.

Applications for grants under this competition may be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants system, or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: June 8, 2005.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.* If you choose to submit your application to us electronically, you must use e-Application available through the Department's e-Grants system, accessible through the e-Grants portal page at: *http://e-grants.ed.gov.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

• Your participation in e-Application is voluntary.

• You must complete the electronic submission of your grant application by 4:30 p.m., Washington, DC time, on the application deadline date. The e-Application system will not accept an application for this competition after 4:30 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.

• The regular hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until midnight Saturday, Washington, DC time. Please note that the system is unavailable on Sundays, and between 7 p.m. on Wednesdays and 6 a.m. on Thursdays, Washington, DC time, for maintenance. Any modifications to these hours are posted on the e-Grants Web site.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

• You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• Any narrative sections of your application should be attached as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format.

• Your electronic application must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgement that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the ED 424 to the Application Control Center after following these steps:

(1) Print ED 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2)(a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If the system is down and therefore the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application.

Extensions referred to in this section apply only to the unavailability of the Department's e-Application system. If the e-Application system is available, and, for any reason, you are unable to submit your application electronically or you do not receive an automatic acknowledgement of your submission, you may submit your application in paper format by mail or hand delivery in accordance with the instructions in this notice.

b. *Submission of Paper Applications By Mail.* If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.129W), 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.129W), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.* If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.129W), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* The Government Performance and Results Act (GPRA) of 1993 directs Federal departments and agencies to improve the effectiveness of their programs by engaging in strategic planning, setting outcome-related goals for programs, and measuring program results against those goals.

The goal of this priority is to increase the number of currently employed VR agency counselors who meet their States' Comprehensive System of Personnel Development standards. Grantees will be required to provide information in their annual performance reports on the number of trainees who complete the training with credentials that meet their States' CSPD standards. The Rehabilitation Services Administration will use these data, along with information provided annually by the State VR agencies in conjunction with their State plans (Attachment 4.11(b)—Procedures and Activities for the Establishment and Maintenance of a Comprehensive System of Personnel Development) to determine the extent to which this program is assisting States in maintaining qualified personnel who meet the States' CSPD standards.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Beverly Steburg, U.S. Department of Education, Rehabilitation Services Administration, 61 S. Forsyth Street,

SW., suite 18T91, Atlanta, GA 30303. Telephone: (404) 562–6336.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: March 7, 2005.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 05–4693 Filed 3–9–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Small Business Innovative Research Program (SBIR) Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133S–1.

DATES: *Applications Available:* March 10, 2005.

Deadline for Transmittal of Applications: May 9, 2005.

Eligible Applicants: Small business concerns as defined by the Small Business Administration (SBA) at the time of the award. This definition is included in the application package.

All technology, science, or engineering firms with strong research capabilities in any of the priority areas listed in this notice are encouraged to participate.

Consultative or other arrangements between these firms and universities or other non-profit organizations are permitted, but the small business concern must serve as the grantee.

If it appears that an applicant organization does not meet the eligibility requirements, we will request an evaluation by the SBA. Under circumstances in which eligibility is unclear, we will not make a SBIR award until the SBA makes a determination.

Estimated Available Funds: $1,275,000 for new Phase I awards.

Note: The estimated amount of funds available for new Phase I awards is based upon the estimated threshold SBIR allocation for OSERS, less prior commitments for Phase II continuation awards.

Estimated Average Size of Awards: $75,000.

Maximum Award: We will reject any application that proposes a budget exceeding $75,000 for a single budget period of 6 months.

Note: Maximum award amount includes direct and indirect costs and fees.

Estimated Number of Awards: 17.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 6 months for Phase I.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of this program is to stimulate technological innovation in the private sector, strengthen the role of small business in meeting Federal research or research and development (R/R&D) needs, increase the commercial application of Department of Education (ED) supported research results, and improve the return on investment from federally funded research for economic and social benefits to the Nation.

Note: NIDRR supports the goals of President Bush's New Freedom Initiative (NFI). The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/infocus/newfreedom/.*

The goals of the SBIR program are in concert with NIDRR's 1999–2003 Long-Range Plan (Plan). The Plan can be accessed on the Internet at the following site: *http://www.ed.gov/rschstat/research/pubs/index.html.*

Through the implementation of the NFI and the Plan, NIDRR seeks to—(1) improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

Background

The Small Business Reauthorization Act of 2000 (Act) was enacted on December 21, 2000. The Act requires certain agencies, including ED, to establish SBIR programs by reserving a statutory percentage of their extramural research and development budgets to be awarded to small business concerns for R/R&D through a uniform, highly competitive three-phase process.

The three phases of the SBIR program are:

Phase I: Phase I projects determine, insofar as possible, the scientific or technical merit and feasibility of ideas submitted under the SBIR program. The application should concentrate on research that will significantly contribute to proving the scientific or technical feasibility of the approach or concept and that would be a prerequisite to further Department support in Phase II.

Phase II: Phase II projects expand on the results of and further pursue the development of Phase I projects. Phase II is the principal R/R&D effort. It requires a more comprehensive application, outlining the effort in detail including the commercial potential. Phase II applicants must be Phase I awardees with approaches that appear sufficiently promising as a result of Phase I. Awards are for periods of up to 2 years in amounts up to $500,000.

Phase III: In Phase III, the small business must use non-SBIR capital to pursue commercial applications of the R/R&D. Also, under Phase III, Federal agencies may award non-SBIR follow-on funding for products or processes that meet the needs of those agencies.

All SBIR projects funded by NIDRR must address the needs of individuals with disabilities and their families. 29 U.S.C. 762. Activities may include exploring the uses of technology to ensure equal access to education, employment, community environments, and information for individuals with disabilities and improving the quality and utility of disability and rehabilitation research.

Priorities: Under this competition we are particularly interested in applications that address one of the following priorities.

Invitational Priorities: For FY 2005 these priorities are invitational

priorities. Under 34 CFR 75.105(c)(1) we do not give an application that meets one of these invitational priorities a competitive or absolute preference over other applications. The invitational priorities relate to innovative research utilizing new technologies to address the needs of individuals with disabilities and their families.

These priorities are:

(1) Development of technology to support access, promote integration, or foster independence of individuals with disabilities in the workplace, recreational activities or educational settings.

(2) Development of technology to enhance sensory or motor function of individuals with disabilities.

(3) Development of technology to support transition into post-secondary educational or employment settings for individuals with disabilities.

(4) Development of accessible information technology including Web access technology, unique software, and other systems and devices that promote access to information in educational, employment and community settings including access to voting technology.

(5) Development of technology to support independent access to health care services in the community.

Each applicant should describe the approaches they expect to use to collect empirical evidence that demonstrates the effectiveness of the technology they are proposing in an effort to assess the efficacy and usefulness of the technology.

Note: Applicants are encouraged to consider universal design principles and guidelines for more accessible design. Universal design is defined as ''the design of products and environments to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design.'' (The Center for Universal Design, 1997. The Principles of Universal Design, Version 2.0. Raleigh, NC: North Carolina State University. Web: *http://www.ncsu.edu/www/ncsu/design/sod5/cud/univ_design/ud.htm*.) Accessible design of consumer products minimizes or alleviates barriers that reduce the ability of individuals with disabilities to effectively or safely use standard consumer products (For more information see—*http://www.trace.wisc.edu/docs/consumer_product_guidelines/consumer.pcs/disabil.htm*.)

Program Authority: The Small Business Reauthorization Act of 2000, Pub. L. 106–554 (15 U.S.C. 631 and 638) and title II of the Rehabilitation Act of 1973, as amended.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 81, 82, 84, 85, 97, 98 and 99.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $1,275,000 for new Phase I awards.

Note: The estimated amount of funds available for new Phase I awards is based upon the estimated threshold SBIR allocation for OSERS, less prior commitments for Phase II continuation awards.

Estimated Average Size of Awards: $75,000.

Maximum Award: We will reject any application that proposes a budget exceeding $75,000 for a single budget period of 6 months.

Note: Maximum award amount includes direct and indirect costs and fees.

Estimated Number of Awards: 17.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 6 months for Phase I.

III. Eligibility Information

1. *Eligible Applicants:* Small business concerns as defined by the SBA at the time of the award. This definition is included in the application package.

All technology, science, or engineering firms with strong research capabilities in any of the priority areas listed in this notice are encouraged to participate.

Consultative or other arrangements between these firms and universities or other non-profit organizations are permitted, but the small business concern must serve as the grantee.

If it appears that an applicant organization does not meet the eligibility requirements, we will request an evaluation by the SBA. Under circumstances in which eligibility is unclear, we will not make a SBIR award until the SBA makes a determination.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You may obtain an application package via Internet or from the ED Publications Center (ED Pubs). To obtain a copy via Internet use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html*. To obtain a copy of the application package from ED Pubs, write or call the following: ED Pubs P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. Fax: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.133S–1.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed under section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III (narrative) to the equivalent of no more than 25 pages, excluding any documentation of prior multiple Phase II awards, if applicable, and required forms, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Single space all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller that 10 pitch (characters per inch). Standard black type should be used to permit photocopying.
- Draw all graphs, diagrams, tables, and charts in black ink. Do not include glossy photographs or materials that cannot be photocopied in the body of the application.

The page limit does not apply to the budget section, including the narrative budget justification; the one-page abstract; the resumes; the bibliography; the letters of support; certifications; statements; related application(s) or award(s); or documentation of multiple Phase II awards, if applicable.

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (ED Standard Form 424); budget requirements (ED Form 524) and other required forms; an abstract, certifications, and statements; a technical content project narrative (subject to the page limits); and related application(s) or award(s) and

documentation of multiple Phase II awards, if applicable.

We will reject your application if—

• You apply these standards and exceed the page limit; or

• You apply other standards and exceed the equivalent of the page limit.

3. *Content Restrictions:* If an applicant chooses to respond to the invitational priorities and an application is relevant to more than one priority, the applicant must decide which priority is most relevant to the application and submit the application under that priority only. There is no limitation on the number of different applications that an applicant may submit under this competition. An applicant may submit separate applications on different topics, or different applications on the same priority. However, each application must respond to only one priority.

4. *Submission Dates and Times:*

Applications Available: March 10, 2005.

Deadline for Transmittal of Applications: May 9, 2005. Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically or by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

5. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

6. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

7. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Small Business Innovative Research Program—CFDA Number 84.133S–1 must be submitted electronically using the Grants.gov Apply site. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Small Business Innovative Research Program—CFDA Number 84.133S–1 at: *http://www.grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted with a date/time received by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. We will not consider your application if it was received by the Grants.gov system later than 4:30 p.m. on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was submitted after 4:30 p.m. on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that your application is submitted timely to the Grants.gov system.

• To use Grants.gov, you, as the applicant, must have a D–U–N–S Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five business days to complete the CCR registration.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Any narrative sections of your application should be attached as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format.

• Your electronic application must comply with any page limit requirements described in this notice.

• After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; *and*

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Carol Cohen, U.S.

Department of Education, 400 Maryland Avenue, SW., room 6035, Potomac Center Plaza, Washington, DC 20202–2700. Fax: (202) 245–7323.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier), your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133S–1), 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.133S–1), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133S–1), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the Application for Federal Education Assistance (ED 424) the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 of EDGAR and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

Note: NIDRR will provide information by letter to grantees on how and when to submit the report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through review of grantee performance and products. Each year, NIDRR examines information submitted by SBIR grantees as part of their Final Report to determine:

- The degree to which the grantees are conducting high-quality research, as reflected in the appropriateness of study designs, the rigor with which accepted standards of scientific and engineering methods are applied, and the degree to which the research builds on and contributes to the level of knowledge in the field;
- The number of new or improved tools and products developed or tested with NIDRR funding that improve measurement and data collection procedures and enhance the design and evaluation of disability and rehabilitation interventions, products and devices; and
- The number of new or improved assistive and universally designed technologies, products, and devices developed by grantees that improve outcomes, increase access, and have potential to be transferred to industry for commercialization.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Carol Cohen, U.S. Department of Education, 400 Maryland Avenue, SW., room 6035, Potomac Center Plaza, Washington, DC 20202–2700. Telephone: (202) 245–7303 or via Internet: *carol.cohen@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the

following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: March 4, 2005.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 05–4740 Filed 3–9–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–208–000]

Algonquin Gas Transmission, LLC; Notice of Proposed Changes in FERC Gas Tariff

March 3, 2005.

Take notice that on February 28, 2005, Algonquin Gas Transmission, LLC (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective April 1, 2005.

Algonquin states that the purpose of this filing is to modify its tariff to remove outdated provisions related to the implementation of the requirements of Order Nos. 636, *et seq.* on its system.

Algonquin states that copies of its filing have been served upon all affected customers of Algonquin and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1010 Filed 3–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–201–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

March 3, 2005.

Take notice that on February 28, 2005, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Thirty-Sixth Revised Sheet No. 11A, to become effective April 1, 2005.

CIG states that the tariff sheet is being filed to revise the fuel reimbursement percentage applicable to Lost, Unaccounted-For and Other Fuel Gas.

CIG states that copies of its filing have been sent to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1003 Filed 3–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP05–76–000; CP05–77–000; and CP05–78–000]

Dominion South Pipeline Co., LP; Notice of Application

March 3, 2005.

Take notice that on February 28, 2005, Dominion South Pipeline Company, LP (Dominion South), 120 Tredegar Street, Richmond, Virginia 23219, filed with the Commission an application, pursuant to section 7(c) of the Natural Gas Act, and Subpart F of Part 157, and Subpart G of Part 284 of the Commission's Regulations for: (1) A

certificate of public convenience and necessity authorizing Dominion South to construct and operate natural gas pipeline facilities (Dominion South Pipeline) connecting Transcontinental Gas Pipe Line and Florida Gas Transmission in Matagorda County, Texas; (2) a blanket certificate pursuant to Part 157, Subpart F, authorizing Dominion South to construct, acquire, operate and abandon facilities; and (3) a blanket certificate pursuant to Subpart G of Part 284 authorizing Dominion South to provide open-access firm and interruptible interstate natural gas services and the associated pre-granted abandonment authorization, as more fully set forth in the application which is open to public inspection. This filing may be also viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERCOnline Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Dominion South proposes to construct and operate approximately 5 feet of 12-inch diameter pipeline to serve as an interconnecting pipeline between Florida Gas Transmission Company's (FGT) and Transcontinental Gas Pipe Line Corp.'s (Transco) currently segregated pipelines in Matagorda County, Texas. Dominion South would receive natural gas volumes from Transco and deliver to FGT up to 200,000 Dekatherm equivalent of natural gas per day on behalf of Dominion Field Services, Inc. Dominion South estimates that it would cost $2,256,123 to construct the proposed interconnecting pipeline.

Any questions regarding this application should be directed to Anne E. Bomar, Managing Director, Transmission Rates and Regulation, Dominion Resources, Inc., 120 Tredegar Street, Richmond, Virginia 23219, or via telephone at (804) 819–2134.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Comment Date: March 23, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–999 Filed 3–9–05; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL ENERGY REGULATORY COMMISSION

[Docket No. RP05–203–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

March 3, 2005.

Take notice that on February 28, 2005, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective April 1, 2005:

Sixty-Ninth Revised Sheet No. 8A
Sixty-First Revised Sheet No. 8A.01
Sixty-First Revised Sheet No. 8A.02
Twenty-First Revised Sheet No. 8A.04
Sixty-Fourth Revised Sheet No. 8B
Fifty-Seventh Revised Sheet No. 8B.01
Thirteenth Revised Sheet No. 8B.02

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail

FERCOnlineSupport@ferc.gov, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1005 Filed 3–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF05–5–000]

Gulf LNG Energy LLC; Notice of Environmental Review and Scoping for the Proposed Lng Clean Energy Project and Request for Comments on Environmental Issues

March 3, 2005.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of the LNG Clean Energy Project involving construction and operation of facilities by Gulf LNG Energy LLC (Gulf LNG) in Port of Pascagoula, on Mississippi lands in Bayou Casotte that are owned or controlled by the Jackson County Port Authority. The proposed facilities would consist of a liquefied natural gas (LNG) import terminal and one interconnecting pipeline. The Commission will use this EIS in its decision-making process to determine whether or not the project is in the public convenience and necessity.

The LNG Clean Energy Project is currently in the preliminary design stage. At this time no formal application has been filed with the FERC. For this project, the FERC staff is initiating its National Environmental Policy Act (NEPA) review prior to receiving the application. This will allow interested stakeholders to be involved early in project planning and to identify and resolve issues before an application is filed with the FERC. A docket number (PF05–5–000) has been established to place information filed by Gulf LNG and related documents issued by the Commission, into the public record.[1] Once a formal application is filed with the FERC, a new docket number will be established.

This notice is being sent to residents within 0.5 mile of the proposed LNG terminal site; landowners along the pipeline route under consideration; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; and local libraries and newspapers.

With this notice, we[2] are asking these and other Federal, State, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EIS. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies which would like to request cooperating status should follow the instructions for filing comments described later in this notice. We encourage government representatives to notify their constituents of this planned project and encourage them to comment on their areas of concern.

Some affected landowners may be contacted by a project representative about the acquisition of an easement to construct, operate, and maintain the proposed pipeline. If so, the company should seek to negotiate a mutually acceptable agreement. In the event that the project is certificated by the Commission, that approval conveys the right of eminent domain for securing easements for the pipeline. Therefore, if easement negotiations fail to produce an agreement, the company could initiate condemnation proceedings in accordance with state law.

Summary of the Proposed Project

The facility location would be in Bayou Casotte (East) Harbor, Port of Pascagoula, Jackson County, Mississippi, approximately 14 nautical miles from the sea buoy in the Gulf of Mexico and 10 nautical miles from the barrier islands that separate the Gulf of Mexico from the Mississippi Sound. The LNG site would be accessible from the Bayou Casotte Ship Channel which is 42 feet deep and 350 feet wide. The facilities would consist of an LNG import terminal that would unload LNG from ships and transfer it to two 160,000 cubic meter containment LNG storage tanks on shore. The facility would have the capacity to process an average of one billion cubic feet of LNG per day. In addition, up to about five miles of 36-inch-diameter pipeline would be constructed from the LNG terminal to transport the natural gas to Destin Pipeline Company. The project would consist of the following facilities:

- An LNG terminal consisting of a berth and unloading dock and jetty to accommodate one LNG carrier. The berth and dock would be designed to service LNG carriers ranging in capacity from 87,000 cubic meters (m^3) to 138,000 m^3. The anticipated level of traffic at full terminal capacity would be 115 ships per year.
- Two 160,000 cubic meter full containment LNG storage tanks on shore; and
- About five miles of 36-inch-diamenter send-out pipeline that would connect with Destin Pipeline near Pascagoula, Mississippi.

A map depicting the proposed terminal site and the proposed pipeline route is provided in appendix 1.[3] [4]

Land Requirements

The proposed LNG terminal would be located within approximately 40 acres of land within a 259-acre property under control of the Port of Pascagoula at the entrance to Bayou Casotte and accessible via the Pascagoula Ship Channel. The project would require dredging of a turning basin and berth to achieve the required size and depth to accommodate the LNG tanker ships. The terminal site contains about eight acres of wetlands, but the current conceptual facility layout would avoid placement of equipment and facilities within the wetland area, except for the pipeline.

The send-out pipeline would parallel the outer perimeter of the U.S. Army Corps of Engineers dredged material disposal area to its tie-in with Destin Pipeline. A right-of-way width was not specified in Gulf LNG's proposal.

The EIS Process

NEPA requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity, or an import authorization under section 3 of the Natural Gas Act. NEPA also requires us to discover and address issues and concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus

[1] To view information in the docket, follow the instructions for using the eLibrary link at the end of this notice.

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Office of Energy Projects.

[3] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's Internet Web site (*http://www.ferc.gov*) at the ''eLibrary'' link or from the Commission's Public Reference and Files Maintenance Branch at (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice.

[4] Requests for detailed maps of the facilities may be made to the company directly. Write, call, or e-mail: Neil Carter, Project Director, Gulf LNG Energy, LLC, 600 Travis, Suite 6800, Houston, Texas 77002; telephone No. 1–866–Gulf–LNG) (e-mail *NOI@gulflngenergy.com*); second contact: Erik Swenson, King & Spalding, 191 Peachtree Street, Atlanta, GA 30303; telephone No. (404) 572–3540, (*ESwenson@KSLAW.com*). Be as specific as you can about the location(s) of your area(s) of interest.

the analysis in the EIS on the important environmental issues and reasonable alternatives. By this notice, we are requesting agency and public comments on the scope of the issues to be analyzed and presented in the EIS. All scoping comments received will be considered during the preparation of the EIS. To ensure your comments are considered, please carefully follow the instructions in the public participation section of this notice.

The EIS will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Water resources, fisheries, and wetlands
- Vegetation and wildlife
- Endangered and threatened species
- Land use
- Cultural resources
- Air quality and noise
- Public safety

Our independent analysis of the issues will be included in a draft EIS. The draft EIS will be mailed to federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; affected landowners; other interested parties; local libraries and newspapers; and the Commission's official service list for this proceeding. A 45-day comment period will be allotted for review of the draft EIS. We will consider all comments on the draft EIS and revise the document, as necessary, before issuing a final EIS. In addition, we will consider all comments on the final EIS before we make our recommendations to the Commission.

Currently Identified Environmental Issues

We have identified several issues that we think deserve attention based on a preliminary review of the planned facilities and the environmental resources present in the project area. This preliminary list of issues may be changed based information obtained during the public participation period and on our continuing analysis:

- Another LNG project may be proposed adjacent to this project.
- Water Resources
  —Assessment of construction effects on water quality.
  —Review of wetland areas impacted on the terminal site.
—Fish, Wildlife, and Vegetation
  —Effects on wildlife and fisheries including commercial and recreational fisheries.
  —Potential impacts of water intake/discharge systems and their potential impact on marine species.
- Endangered and Threatened Species
  —Effects on federally-listed species
  —Effects on essential fish habitat.
- Reliability and Safety
  —Safety and security of the terminal and pipeline.
  —LNG shipping.

Our evaluation will also include possible alternatives to the proposed project or portions of the project, and we will make recommendations on how to lessen or avoid impacts on the various resource areas of concern.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EIS and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations and routes), and measures to avoid or lessen environmental impact. Gulf LNG has established a preliminary pipeline route for the project; however, if minor reroutes or variations are required to avoid or minimize impacts to certain features on your property, this is your opportunity to assist us and Gulf LNG in identifying your specific areas of concern. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of your comments for the attention of Gas Branch 2; and
- Reference Docket No. PF05–5–000 on the original and both copies.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''eFiling'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on ''Login to File'' and then ''New User Account.''

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Mailing List Retention Form included in Appendix 2.

In addition, the FERC staff will conduct a scoping meeting of the project in the future. A notice of the scoping meeting will be issued by FERC at a later date.

Availability of Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208 FERC (3372) or on the FERC Internet Web site (*http://www.ferc.gov*). Using the ''eLibrary'' link, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' (*i.e.,* PF05–5–000), and follow the instructions. Searches may also be done using the phrase ''Gulf LNG'' in the ''Text Search'' field. For assistance with access to eLibrary, the helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC Internet website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to *http://www.ferc.gov/esubscribenow.htm.*

Further, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Finally, Gulf LNG has established an Internet Web site for its project at *http://www.lngcleanenergy.com/overview/.* The Web site includes a description of the project, maps and photographs of the proposed site, information on LNG, and links to related documents.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1001 Filed 3–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES05–20–000]

Kandiyohi Power Cooperative; Notice of Filing

March 3, 2005.

Take notice that on February 24, 2005, Kandiyohi Power Cooperative (Kandiyohi) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to make long-term borrowings in an amount up to $7 million from the National Rural Cooperative Finance Corporation.

Kandiyohi also requests waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on March 24, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1000 Filed 3–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–207–000]

Kern River Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

March 3, 2005.

Take notice that on February 28, 2005, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective April 1, 2005:

Fifteenth Revised Sheet No. 5,
Eleventh Revised Sheet No. 5–A,
Thirteenth Revised Sheet No. 6,
Second Revised Sheet No. 110–C

Kern River states that the purpose of this filing is: (1) To adjust the electric compressor fuel surcharges applicable to gas scheduled for delivery downstream of the Daggett compressor station and to incorporate the revised surcharges into Kern River's tariff; and (2) to modify the language in section 12.12(d) to properly account for surcharges collected or credited.

Kern River states that it has served a copy of this filing upon its customers and interested state regulatory commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1009 Filed 3–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–204–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

March 3, 2005.

Take notice that on February 28, 2005, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Seventy Fourth Revised Sheet No. 9, to become effective March 1, 2005.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date

need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1006 Filed 3–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–202–000]

Panhandle Eastern Pipe Line Company, LP; Notice of Proposed Changes in FERC Gas Tariff

March 3, 2005.

Take notice that on February 28, 2005, Panhandle Eastern Pipe Line Company, LP (Panhandle) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the revised tariff sheets listed on Appendix A attached to the filing, to become effective April 1, 2005.

Panhandle states that the purpose of this filing, made in accordance with section 24 (fuel reimbursement adjustment) of the General Terms and Conditions in Panhandle's FERC Gas Tariff, Third Revised Volume No. 1, is to update the fuel reimbursement percentages proposed to be effective April 1, 2005.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1004 Filed 3–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–209–000]

Sea Robin Pipeline Company, LLC; Notice of Tariff Filing

March 3, 2005.

Take notice that on March 1, 2005, Sea Robin Pipeline Company, LLC (Sea Robin) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed in Appendix A to the filing, to become effective April 1, 2005.

Sea Robin states that the purpose of this filing is to modify Sea Robin's parking service to make a master parking point list available to shippers and to consolidate the primary and secondary points on one exhibit to the forms of service agreement for firm transportation along with other clarifying and conforming tariff revisions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–998 Filed 3–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–206–000]

Southwest Gas Storage Company; Notice of Tariff Filing

March 3, 2005.

Take notice that on February 28, 2005, Southwest Gas Storage Company (Southwest) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Thirteenth Revised Sheet No. 5, to become effective April 1, 2005.

Southwest states that the purpose of this filing is to update the fuel reimbursement percentages proposed to be effective April 1, 2005.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1008 Filed 3–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–205–000]

Trunkline Gas Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

March 3, 2005.

Take notice that on February 28, 2005, Trunkline Gas Company, LLC (Trunkline) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective April 1, 2005:

Sixth Revised Sheet No. 10
Sixth Revised Sheet No. 11
Sixth Revised Sheet No. 12
Sixth Revised Sheet No. 13
Sixth Revised Sheet No. 14
Sixth Revised Sheet No. 15
Sixth Revised Sheet No. 16
Sixth Revised Sheet No. 17

Trunkline states that the purpose of this filing, made in accordance with section 22 (fuel reimbursement adjustment) of the General Terms and Conditions in Trunkline's FERC Gas Tariff, Third Revised Volume No. 1, is to update the fuel reimbursement percentages proposed to be effective April 1, 2005.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1007 Filed 3–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2268–010, et al.]

Pinnacle West Capital Corporation, et al.; Electric Rate and Corporate Filings

March 2, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Pinnacle West Capital Corporation, Arizona Public Service Company, Pinnacle West Energy Corporation and APS Energy Services, Inc.

[Docket Nos. ER00–2268–010, EL05–10–002; ER99–4124–008, EL05–11–0002; ER00–3312–009, EL05–12–002; ER99–4122–011, EL05–13–002]

Take notice that on February 18, 2005, the Pinnacle West Capital Corporation (PWCC), the Arizona Public Service Company (APS), the Pinnacle West Energy Corporation (PWEC) and APS Energy Services Company, Inc. (APSES) (collectively, Pinnacle West Companies) filed with the Commission a response to the Commission's Order dated December 20, 2004, directing Pinnacle West Companies to provide additional information to the Commission to supplement its market update for authorization to sell at market-based

rates and various tariff amendments filed on August 11, 2004.

Comment Date: 5 p.m. Eastern Time on March 11, 2005.

2. PSEG Lawrenceburg Energy Company LLC and PSEG Waterford Energy LLC

[Docket Nos. ER01–2460–003 and ER01–2482–003]

Take notice that on February 15, 2005, PSEG Lawrenceburg Energy Company LLC (PSEG Lawrenceburg) and PSEG Waterford Energy LLC (PSEG Waterford) (collectively, the Applicants) submitted supplemental information regarding their February 7, 2005 filing of an updated market power analysis and updated tariff sheets in the above-referenced proceeding.

Comment Date: 5 p.m. Eastern Time on March 9, 2005.

3. PacifiCorp

[Docket No. ER05–554–001]

Take notice that on February 28, 2005, PacifiCorp tendered for filing an amendment to their February 4, 2005 filing in Docket No. ER05–554–000 regarding Generation Interconnection Agreements between PacifiCorp and Roseburg Forest Products Inc.; TDY Industries, Inc. PacifiCorp states it also filed a Transmission Service Agreement between PacifiCorp and Warm Springs Power Enterprises in the same filing.

Comment Date: 5 p.m. Eastern Time on March 21, 2005.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda L. Mitry,

Deputy Secretary.

[FR Doc. E5–1015 Filed 3–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC05–54–000, et al.]

Reliant Energy Mid-Atlantic Power Holdings, LLC, et al.; Electric Rate and Corporate Filings

March 3, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Reliant Energy Mid-Atlantic Power Holdings, LLC; Reliant Energy Maryland Holdings, LLC; and Brascan Power Piney & Deep Creek, LLC

[Docket No. EC05–54–000]

Take notice that on March 1, 2005, Reliant Energy Mid-Atlantic Power Holdings, LLC (Reliant Mid-Atlantic), Reliant Energy Maryland Holdings, LLC (Reliant Maryland) and Brascan Power Piney & Deep Creek, LLC (Brascan Power PDC) (collectively the Applicants) filed with the Federal Energy Regulatory Commission an application, pursuant to section 203 of the Federal Power Act and Part 33 of the Commission's regulations, seeking authorization for a transfer of assets. Reliant Mid-Atlantic states that it proposed to transfer to Brascan Power PDC the 28 MW Piney Hydroelectric Project located on the Clarion River in Piney Township, Clarion County, Pennsylvania. Reliant Maryland also states that it proposed to transfer to Deep Creek the 20 MW Deep Creek Project located in Garrett County, Maryland (together, the Sale). Reliant Maryland states that the proposed Sale will constitute the disposition of certain jurisdictional facilities and assets held by Reliant Mid-Atlantic and Reliant Maryland including interconnection facilities, related interconnection equipment, interconnection agreement, and related accounts, books, and records.

Comment Date: 5 p.m. Eastern Time on March 22, 2005.

2. DTE Energy Trading, Inc.

[Docket Nos. EC05–55–000 and ER97–3834–013]

Take notice that on March 1, 2005, DTE Energy Trading, Inc., (DTET), submitted an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby DTET's corporate affiliate, CoEnergy Trading Company, will be merged with and into DTET in an internal corporate reorganization. DTET states that there will be no consideration for the transaction. DTET further states that its sole jurisdictional facilities are its market-based rate tariff and the power sales/purchase contracts executed thereunder. DTET also submitted a notice of no material change in status with respect to its market-based rate authorization.

Comment Date: 5 p.m. Eastern Time on March 22, 2005.

3. PacifiCorp

[Docket No. TX04–4–000]

Take notice that on February 28, 2005 as amended March 1, 2005, PacifiCorp tendered for filing an Amended Application for an Order Directing the Provision of Transmission Service.

PacifiCorp states that copies of this filing were supplied to Nevada Power, the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment Date: 5 p.m. Eastern Time on March 14, 2005.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and

interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda L. Mitry,

Deputy Secretary.

[FR Doc. E5–1016 Filed 3–9–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP04–386–000, CP04–400–000, CP04–401–000, CP04–402–000]

Golden Pass LNG Terminal L.P., Golden Pass Pipeline L.P.; Notice of Availability of the Draft Environmental Impact Statement for the Proposed Golden Pass LNG Terminal and Pipeline Project

March 3, 2005.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a draft Environmental Impact Statement (EIS) on the liquefied natural gas (LNG) import terminal and natural gas pipeline facilities in Jefferson, Orange, and Newton Counties, Texas and Calcasieu Parish, Louisiana proposed by Golden Pass LNG Terminal L.P. and Golden Pass Pipeline L.P. (collectively referred to as Golden Pass) in the above-referenced dockets.

The draft EIS was prepared to satisfy the requirements of the National Environmental Policy Act (NEPA). The staff concludes that approval of the proposed project with appropriate mitigating measures as recommended, would have limited adverse environmental impact. The draft EIS also evaluates alternatives to the proposal, including system alternatives, alternative sites for the LNG import terminal, and pipeline alternatives.

Golden Pass's proposed facilities would transport an average of 2.0 billion cubic feet per day (Bcfd) of imported natural gas to the U.S. market. In order to provide LNG import, storage, and pipeline transportation services, Golden Pass requests Commission authorization to construct, install, and operate an LNG terminal and natural gas pipeline facilities.

The draft EIS addresses the potential environmental effects of the construction and operation of the following LNG terminal and natural gas pipeline facilities:

- A new protected marine terminal basin connected to the Port Arthur Channel that would include a ship maneuvering area, two protected berths, and unloading facilities capable of accommodating up to 200 LNG ships per year;
- A total of five all-metal, double-walled, full containment LNG storage tanks, each with a nominal working volume of approximately 155,000 cubic meters (975,000 barrels) and each with secondary containment dikes to contain 110 percent of the gross tank volume;
- A total of ten shell-and-tube vaporizers, using a closed loop circulating solution and selective catalytic reduction to reduce regulated pollutants;
- Associated LNG storage and vaporization facilities, including administrative, storage, and maintenance buildings, access roads, and a waterline;
- A pipeline system comprised of 77.8 miles of 36-inch-diameter mainline, 42.8 miles of 36-inch-diameter loop, and 1.8 miles of 24-inch-diameter lateral; and
- Associated ancillary pipeline facilities, including interconnections with up to 11 existing interstate and intrastate pipeline systems.

Comment Procedures and Public Meetings

Any person wishing to comment on the draft EIS may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your comments to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.
- Reference Docket Nos. CP04–386–000 *et al.* and CP04–400–000;
- Label one copy of the comments for the attention of Gas Branch 2, PJ11.2; and
- Mail your comments so that they will be received in Washington, DC on or before April 19, 2005.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of the project. However, the Commission strongly encourages electronic filing of any comments or interventions to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created online.

In addition to or in lieu of sending written comments, we invite you to attend the public comment meetings we will conduct in the project area. The location and time for this meetings are listed below:

March 22, 2005, 7 p.m. (CST); VFW Hall, 4402 Highway 12, Starks, Louisiana, Telephone: (337) 743–6409.

March 23, 2005, 7 p.m. (CST); Sabine Pass School Auditorium, 5641 South Gulfway Drive, Sabine Pass, Texas, Telephone: (409) 971–2321.

These meetings will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information. Interested groups and individuals are encouraged to attend and present oral comments on the draft EIS. Transcripts of the meetings will be prepared.

After these comments are reviewed, any significant new issues are investigated, and modifications are made to the draft EIS, a final EIS will be published and distributed by the staff. The final EIS will contain the staff's responses to timely comments received on the draft EIS.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).

Anyone may intervene in this proceeding based on this draft EIS. You must file your request to intervene as

specified above.[1] You do not need intervenor status to have your comments considered.

The draft EIS has been placed in the public files of the FERC and is available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

A limited number of copies are available from the Public Reference Room identified above. In addition, copies of the draft EIS have been mailed to Federal, state, and local agencies; public interest groups; individuals and affected landowners who requested a copy of the draft EIS; libraries; newspapers; and parties to this proceeding.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with eLibrary, the eLibrary helpline can be reached toll free at 1–866–208–3676, for TTY at (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to the eSubscription link on the FERC Internet Web site.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1011 Filed 3–9–05; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–174–000]

Canyon Creek Compression Company; Notice of Crediting Report

March 3, 2005.

Take notice that on February 4, 2005, Canyon Creek Compression Company (Canyon) tendered for filing its revenue crediting report for the calendar year 2004 pursuant to section 36 of the General Terms and Conditions of its FERC Gas Tariff, Third Revised Volume No. 1.

Canyon states that copies of the filing are being mailed to its customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on March 10, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1002 Filed 3–9–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0045; FRL–7702–6]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 2–day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) to consider and review [a comparison of the results from 1– or 2–year dog studies on pesticides with dog studies of shorter duration].

DATES: The meeting will be held on May 5 –6, 2005, from 8:30 a.m. to approximately 5 p.m, eastern time.

Comments: For the deadlines for the submission of requests to present oral comments and submission of written comments, see Unit I.E. of the **SUPPLEMENTARY INFORMATION**.

Nominations: Nominations of scientific experts to serve as ad hoc members of the FIFRA SAP for this meeting should be provided on or before March 22, 2005.

Special seating: Requests for special seating arrangements should be made at least 5 business days prior to the meeting.

ADDRESSES: The meeting will be held at the Holiday InnRosslyn at Key Bridge, 1900 North Fort Myer Drive, Arlington, VA 22209. The telephone number for the Holiday Inn Rosslyn at Key Bridge is (703) 807–2000.

Comments: Written comments may be submitted electronically (preferred), through hand delivery/courier, or by mail. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

Nominations, requests to present oral comments, and special seating: To submit nominations for ad hoc members of the FIFRA SAP for this meeting, requests for special seating arrangements, or requests to present oral comments, notify the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT**. To ensure proper receipt by EPA, your request must identify docket ID number OPP–2005–0045 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Myrta Christian, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8498; fax number: (202) 564–8382; e-mail addresses: *christian.myrta@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and the Food Quality Protection Act of 1996 (FQPA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2005–0045. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

EPA's position paper, charge/questions to FIFRA SAP, FIFRA SAP composition (i.e., members and consultants for this meeting) and the meeting agenda will be available as soon as possible, but no later than late April 2005. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the FIFRA SAP Internet Home Page at *http://www.epa.gov/scipoly/sap*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments in hard copy that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically (preferred), through hand delivery/courier, or by mail. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2005–0045. The

system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2005–0045. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you deliver as described in Unit I.C.2 or mail to the address provided in Unit I.C.3. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2005–0045. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

3. *By mail*. Due to potential delays in EPA's receipt and processing of mail, respondents are strongly encouraged to submit comments either electronically or by hand delivery or courier. We cannot guarantee that comments sent via mail will be received prior to the close of the comment period. If mailed, please send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2005–0045.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. Provide specific examples to illustrate your concerns.

5. Make sure to submit your comments by the deadline in this document.

6. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

E. How May I Participate in this Meeting?

You may participate in this meeting by following the instructions in this unit. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2005–0045 in the subject line on the first page of your request.

1. *Oral comments*. Oral comments presented at the meetings should not be repetitive of previously submitted oral or written comments. Although requests to present oral comments are accepted until the date of the meeting (unless otherwise stated), to the extent that time permits, interested persons may be permitted by the Chair of FIFRA SAP to present oral comments at the meeting. Each individual or group wishing to make brief oral comments to FIFRA SAP is strongly advised to submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** no later than noon, eastern time, April 28, 2005, in order to be included on the meeting agenda. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard). Oral comments before FIFRA SAP are limited to approximately 5 minutes unless prior arrangements have been made. In addition, each speaker should bring 30 copies of his or her comments and presentation slides for distribution to FIFRA SAP at the meeting.

2. *Written comments*. Although, written comments will be accepted until the date of the meeting (unless otherwise stated), the Agency encourages that written comments be submitted, using the instructions in Unit I.C., no later than noon, eastern time, April 21, 2005, to provide FIFRA SAP the time necessary to consider and review the written comments. It is requested that persons submitting comments directly to the docket also notify the DFO listed under **FOR FURTHER INFORMATION CONTACT**. There is no limit on the extent of written comments for consideration by FIFRA SAP.

3. *Seating at the meeting*. Seating at the meeting will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access and assistance for the hearing impaired, should contact the DFO at least 5 business days prior to the meeting using the information under **FOR FURTHER INFORMATION CONTACT** so that appropriate arrangements can be made.

4. *Request for nominations of prospective candidates for service as ad hoc members of the FIFRA SAP for this meeting.*

As part of a broader process for developing a pool of candidates for each meeting, the FIFRA SAP staff routinely solicit the stakeholder community for nominations of prospective candidates for service as ad hoc members of the FIFRA SAP. Any interested person or organization may nominate qualified individuals to be considered as prospective candidates for a specific meeting. Individuals nominated for this meeting should have expertise in one or more of the following areas: [Veterinary pathologist, pesticide risk assessment, mechanism of toxicity]. Nominees should be scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments on the scientific issues for this meeting. Nominees should be identified by name, occupation, position, address, and telephone number. Nominations should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before March 22, 2005. The Agency will consider all nominations of prospective candidates for this meeting that are received on or before this date. However, final selection of ad hoc members for this meeting is a discretionary function of the Agency.

The selection of scientists to serve on the FIFRA SAP is based on the function of the panel and the expertise needed to address the Agency's charge to the panel. No interested scientists shall be ineligible to serve by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency (except the EPA). Other factors considered during the selection process include availability of the potential panel member to fully participate in the panel's reviews, absence of any conflicts of interest or appearance of lack of impartiality, independence with respect to the matters under review, and lack of

bias. Though financial conflicts of interest, the appearance of lack of impartiality, lack of independence, and bias may result in disqualification, the absence of such concerns does not assure that a candidate will be selected to serve on the FIFRA SAP. Numerous qualified candidates are identified for each panel. Therefore, selection decisions involve carefully weighing a number of factors including the candidates' areas of expertise and professional qualifications and achieving an overall balance of different scientific perspectives on the panel. In order to have the collective breadth of experience needed to address the Agency's charge for this meeting, the Agency anticipates selecting approximately 12 ad hoc scientists.

If a prospective candidate for service on the FIFRA SAP is considered for participation in a particular session, the candidate is subject to the provisions of 5 CFR part 2634, Executive Branch Financial Disclosure, as supplemented by the EPA in 5 CFR part 6401. As such, the FIFRA SAP candidate is required to submit a Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency (EPA Form 3110–48 [5–02]) which shall fully disclose, among other financial interests, the candidate's employment, stocks and bonds and where applicable, sources of research support. The EPA will evaluate the candidate's financial disclosure form to assess that there are no financial conflicts of interest, no appearance of lack of impartiality and no prior involvement with the development of the documents under consideration (including previous scientific peer review) before the candidate is considered further for service on the FIFRA SAP.

Those who are selected from the pool of prospective candidates will be asked to attend the public meetings and to participate in the discussion of key issues and assumptions at these meetings. In addition, they will be asked to review and to help finalize the meeting minutes. The list of FIFRA SAP members participating at this meeting will be posted on the FIFRA SAP web site or may be obtained by contacting the PIRIB at the address or telephone number listed in Unit I.

II. Background

A. Purpose of the FIFRA SAP

Amendments to FIFRA enacted November 28, 1975 (7 U.S.C. 136w(d)), include a requirement under section 25(d) of FIFRA that notices of intent to cancel or reclassify pesticide registrations pursuant to section 6(b)(2) of FIFRA, as well as proposed and final forms of regulations pursuant to section 25(a) of FIFRA, be submitted to a SAP prior to being made public or issued to a registrant. In accordance with section 25(d) of FIFRA, the FIFRA SAP is to have an opportunity to comment on the health and environmental impact of such actions. The FIFRA SAP also shall make comments, evaluations, and recommendations for operating guidelines to improve the effectiveness and quality of analyses made by Agency scientists. Members are scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments as to the impact on health and the environment of regulatory actions under sections 6(b) and 25(a) of FIFRA. The Deputy Administrator appoints seven individuals to serve on the FIFRA SAP for staggered terms of 4 years, based on recommendations from the National Institutes of Health and the National Science Foundation.

Section 104 of FQPA (Public Law 104–170) established the FQPA Science Review Board (SRB). These scientists shall be available to the FIFRA SAP on an ad hoc basis to assist in reviews conducted by the FIFRA SAP.

B. Public Meeting

The FIFRA SAP will meet to consider and review [a comparison of the results from 1– or 2–year dog studies on pesticides with dog studies of shorter duration]. Under the current 40 CFR part 158 toxicology data requirements, a 90–day and a 1–year non-rodent (dog) study (guidelines 82–1 and 83–1) are required for all food use pesticides and for pesticides with nonfood uses if use of the pesticide product is likely to result in repeated human exposure to the product over a significant portion of the human life-span. Over the last three decades the Agency has received the results of a large number of dog studies in support of the registration of pesticides. The Agency has conducted a retrospective analysis of dog studies that provided the basis for the selection of reference doses (RfD's) in order to determine whether the requirement for both a subchronic and a chronic dog study continues to be justified. The analysis involved a comparison of the results of 90–day studies and 1– or 2–year studies or a comparison of interim data (90–days or less) from 1–year dog studies with the data from 1–year in the same study. The Agency will be soliciting comments from the FIFRA Scientific Advisory Committee on this retrospective analysis of the results of dog studies and, specifically, on whether the analysis supports the continuation of the requirement for both subchronic and chronic dog studies or whether consideration should be given to a modification of the current requirements for dog studies.

C. FIFRA SAP Meeting Minutes

The FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency in approximately 60 days after the meeting. The meeting minutes will be posted on the FIFRA SAP web site or may be obtained by contacting the PIRIB at the address or telephone number listed in Unit I.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: February 25, 2005.

Clifford J. Gabriel,

Director, Office of Science Coordination and Policy.

[FR Doc. 05–4334 Filed 3–9–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7883–1]

Clean Water Act Section 303(d): Final Agency Action on 13 Total Maximum Daily Loads (TMDLs)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces final agency action on 13 TMDLs prepared by EPA Region 6 for waters listed in the State of Arkansas, under section 303(d) of the Clean Water Act (CWA). These TMDLs were completed in response to the lawsuit styled *Sierra Club, et al.* v. *Clifford, et al.,* No. LR–C–99–114. Documents from the administrative record files for the final 13 TMDLs, including TMDL calculations and responses to comments, may be viewed at *http://www.epa.gov/earth1r6/6wq/artmdl.htm.*

ADDRESSES: The administrative record files for these 13 TMDLs may be obtained by writing or calling Ms. Diane Smith, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733. Please contact Ms. Smith to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Diane Smith at (214) 665–2145.

SUPPLEMENTARY INFORMATION: In 1999, five Arkansas environmental groups, the Sierra Club, Federation of Fly Fishers, Crooked Creek Coalition, Arkansas Fly Fishers, and Save our Streams (plaintiffs), filed a lawsuit in Federal Court against the EPA, styled *Sierra Club, et al.* v. *Clifford, et al.,* No. LR–C–99–114. Among other claims, plaintiffs alleged that EPA failed to establish Arkansas TMDLs in a timely manner.

EPA Takes Final Agency Action on 13 TMDLs

By this notice EPA is taking final agency action on the following 13 TMDLs for waters located within the State of Arkansas:

Segment-reach	Waterbody name	Pollutant
08050001–022	Big Bayou	Siltation/turbidity.
08050001–022	Big Bayou	Chloride.
08050001–018	Boeuf River	Siltation/turbidity.
08050001–018	Boeuf River	Chloride.
08050001–018	Boeuf River	Sulfates.
08050001–018	Boeuf River	TDS.
08050001–019	Boeuf River	Siltation/turbidity.
08050001–019	Boeuf River	Chloride.
08050002–010	Oak Log Bayou	Siltation/turbidity.
08050002–010	Oak Log Bayou	Chloride.
08050002–010	Oak Log Bayou	TDS.
08050002–003	Bayou Macon	Siltation/turbidity.
08050002–006	Bayou Macon	Siltation/turbidity.

EPA requested the public to provide EPA with any significant data or information that may impact the 13 TMDLs at **Federal Register** Notice: Volume 70, Number 6, pages 1710–1711 (January 10, 2005). No comments were received.

Dated: March 3, 2005.

Miguel I. Flores,

Director, Water Quality Protection Division, Region 6.

[FR Doc. 05–4711 Filed 3–9–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7883–2]

Clean Water Act Section 303(d): Availability of 1 Total Maximum Daily Loads (TMDL)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability for comment of the administrative record file for 1 TMDL and the calculations for this TMDL prepared by EPA Region 6 for waters listed in the State of Arkansas under section 303(d) of the Clean Water Act (CWA). This TMDL was completed in response to the lawsuit styled *Sierra Club, et al.* v. *Browner, et al.,* No. LR–C–99–114.

DATES: Comments must be submitted in writing to EPA on or before April 11, 2005.

ADDRESSES: Comment on the 1 TMDL should be sent to Diane Smith, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733, facsimile (214) 665–7373, or e-mail: *smith.diane@epa.gov.* For further information, contact Diane Smith at (214) 665–2145. Documents from the administrative record file for this TMDL are available for public inspection at this address as well. Documents from the administrative record file may be viewed at *http://www.epa.gov/region6/water/artmdl.htm,* or obtained by calling or writing Ms. Smith at the above address. Please contact Ms. Smith to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Diane Smith at (214) 665–2145.

SUPPLEMENTARY INFORMATION: In 1999, five Arkansas environmental groups, the Sierra Club, Federation of Fly Fishers, Crooked Creek Coalition, Arkansas Fly Fishers, and Save our Streams (plaintiffs), filed a lawsuit in Federal Court against the EPA, styled *Sierra Club, et al.* v. *Browner, et al.,* No. LR–C–99–114. Among other claims, plaintiffs alleged that EPA failed to establish Arkansas TMDLs in a timely manner. EPA proposes this TMDL pursuant to a consent decree entered in this lawsuit.

EPA Seeks Comments on 1 TMDL

By this notice EPA is seeking comment on the following 1 TMDL for waters located within the State of Arkansas:

Segment-reach	Waterbody name	Pollutant
11140302–003	Days Creek	Nitrate.

EPA requests that the public provide to EPA any water quality related data and information that may be relevant to the calculations for this 1 TMDL. EPA will review all data and information submitted during the public comment period and revise the TMDL and determinations where appropriate. EPA will then forward the TMDL to the Arkansas Department of Environmental Quality (ADEQ). The ADEQ will incorporate the TMDL into its current water quality management plan.

Dated: March 3, 2005.

Miguel I. Flores,

Director, Water Quality Protection Division, Region 6.

[FR Doc. 05–4712 Filed 3–9–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

March 2, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing

effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 9, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–XXXX.

Title: Accounting and Separations Information from Incumbent Local Exchange Carriers that Receive Interstate Access Revenues on a Cost Basis.

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 900.

Estimated Time per Response: 20 hours.

Frequency of Response: One time reporting requirement.

Total Annual Burden: 18,000 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This is a one-time data collection designed to assist the Commission in evaluating whether to modify its rules pertaining to jurisdictional separations, specifically, the Part 36 category relationships and jurisdictional cost allocation factors. Jurisdictional separations are the process by which incumbent local exchange carriers apportion regulated costs between the intrastate and interstate jurisdictions. In 2001, the Commission adopted the recommendation of the Federal-State Joint Board on Separations and took action to freeze, on an interim basis, the Part 36 jurisdictional separations rules, in order to stabilize and simplify the separations process while the Commission continued to work on comprehensive separations reform. Specifically, the Commission froze all of the Part 36 category relationships and allocation factors for price cap carriers, and froze all allocation factors for rate-of-return carriers. This freeze was to last for five years or until the Commission completed comprehensive separations reform, whichever came first. The freeze is scheduled to lapse on June 30, 2006.

The requested data is necessary to enable the Federal-State Joint Board on Separations and the Commission to determine whether to extend the separations freeze, and, if not, whether and how to modify the jurisdictional separations process. To assist the Federal-State Joint Board on Separations and the Commission in this regard, carriers will be requested to identify and explain the way in which specific categories of costs and revenues are recorded for accounting and jurisdictional purposes. Among other things, the data will allow the Federal-State Joint Board and the Commission to study the impact of the Internet and the growth in local minutes during the interim freeze.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–4724 Filed 3–9–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 05–421]

Notice of Suspension and of Proposed Debarment Proceedings; Schools and Libraries Universal Service Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Enforcement Bureau (Bureau) gives notice of Mr. Haider Bokhari (a/k/a Syed Haider Ali Bokhari) suspension from the schools and libraries universal service support mechanism. In addition, the Bureau gives notice that debarment proceedings are commencing against Mr. Haider Bokhari.

DATES: Opposition request must be received by March 18, 2005. An opposition request by the party to be suspended must be received 30 days from the receipt of the suspension letter or by March 18, 2005. The Bureau will decide any opposition request for reversal or modification of suspension within 90 days of its receipt of such requests.

FOR FURTHER INFORMATION CONTACT: Diana Lee, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C330, 445 12th Street, SW., Washington, DC 20554. Diana Lee may be contacted by phone at (202) 418–0843 or e-mail at *Diana.Lee@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Bureau has suspension and debarment authority under 47 CFR 54.521 and 47 CFR 0.111(a)(14). Suspension will help ensure that the party to be suspended cannot continue to benefit from the schools and libraries mechanism pending resolution of the debarment process. Attached is the suspension letter, *Notice of Suspension and of Proposed Debarment Proceeding,* DA 05–421, which was mailed to Mr. Haider Bokhari and released on February 16, 2005. The letter (1) Gives notice of the suspension and proposed debarment; (2) gives the reasons for the proposed debarment; (3) explains the debarment procedure; and (4) describes the potential effect of the debarment. The complete text of the suspension letter is available for public inspections and copying during regular business hours at the FCC Reference Information Center, Portal II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. In addition, the complete text the FCC's Web site at *http://www.fcc.gov.* The text may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 488–5300 or (800) 378–3160, facsimile (202) 488–5563, or via e-mail *http://www.bcpiweb.com.*

Federal Communications Commission.

William H. Davenport,

Chief, Investigations and Hearings Division, Enforcement Bureau.

The suspension letter follows:

February 16, 2005.

Via Certified Mail, Return Receipt Requested
Mr. Haider Bokhari, (a/k/a Syed Haider Ali Bokhari), c/o Patrick C. Brennan, Esquire, Brennan & Ramirez LLP, 324 E Wisconsin Ave—Suite 1010, Milwaukee, WI 53202–4309.

Re: Notice of Suspension and of Proposed Debarment, File No. EB–05–IH–0107.

Dear Mr. Haider Bokhari: The Federal Communications Commission (''FCC'' or ''Commission'') has received notice of your January 28, 2005 conviction for mail fraud in violation of 18 U.S.C. 371 and 1341, and for money laundering in violation of the 18 U.S.C. 1956(a) and (h).[1] Consequently, pursuant to 47 CFR 54.521, this letter constitutes official notice of your suspension from the schools and libraries universal service support mechanism (''E-Rate program''). In addition, the Enforcement Bureau (''Bureau'') hereby notifies you that we are commencing debarment proceedings against you.[2]

I. Notice of Suspension

Pursuant to section 54.521(a)(4) of the Commission's rules,[3] your conviction requires the Bureau to suspend you from participating in any activities associated with or related to the schools and libraries fund mechanism, including the receipt of funds or discounted services through the schools and libraries fund mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism.[4] Your suspension becomes effective upon the earlier of your receipt of this letter or publication of notice in the **Federal Register**.[5]

Suspension is immediate pending the Bureau's final debarment determination. You may contest this suspension or the scope of this suspension by filing arguments in opposition to the suspension, with any relevant documentation. Your request must be received within 30 days after it receives this letter or after notice is published in the **Federal Register**, whichever comes first.[6] Such requests, however, will not ordinarily be granted.[7] The Bureau may reverse or limit the scope of suspension only upon a finding of extraordinary circumstances.[8] Absent extraordinary circumstances, the Bureau will decide any request for reversal or modification of suspension within 90 days of its receipt of such request.[9]

II. Notice of Proposed Debarment

A. Reasons for and Cause of Debarment

The Commission has established procedures to prevent persons who have ''defrauded the government or engaged in similar acts through activities associated with or related to the schools and libraries support mechanism'' from receiving the benefits associated with that program.[10] Based on your October 22, 2004 guilty plea, you were convicted, on or about January 28, 2005, of mail fraud and money laundering offenses involving your participation, through a Virginia-based consulting company owned by your brother, Qasim Bokhari, in the E-Rate program with certain schools in Wisconsin and Illinois.[11] In connection with the mail fraud offenses, you admitted to conspiring and carrying out, along with Qasim Bokhari and other co-conspirators, the following acts: (1) Illegally inducing certain Wisconsin and Illinois schools to select the consulting company as the schools' E-Rate service provider by promising school officials that their school would not have to pay their undiscounted share of the cost under the E-Rate program; (2) taking over the schools' role in completing and submitting E-Rate applications, and causing those schools to enter into unnecessarily large contracts for infrastructure enhancements under the E-Rate program; (3) submitting materially false and fraudulent invoices and other documents to the E-Rate program claiming that the schools have been billed for their undiscounted share; (4) submitting materially false and fraudulent invoices and other documents to the E-Rate program claiming that certain work had been performed and goods supplied to the schools; and (5) receiving payment from the E-Rate program for goods and services that you fraudulently claimed the consulting company had provided to the schools. In connection with the money laundering offenses, you admitted to conspiring and carrying out, with Qasim Bokhari and other co-conspirators, the unlawful scheme to transfer the fraudulently obtained E-Rate payments from the United States to Pakistan through the unknowing services of other individuals designed, in whole or in part, to conceal and disguise the nature, location, source, ownership, and control of these monies.[12] These actions constitute the conduct or transactions upon which this debarment proceeding is based.[13] Moreover, your conviction on the basis of these acts falls within the categories of causes for debarment defined in section 54.521(c) of the Commission's rules.[14] Therefore, pursuant to section 54.521(a)(4) of the Commission's rules, your conviction requires the Bureau to commence debarment proceedings against you.

B. Debarment Procedures

You may contest debarment or the scope of the proposed debarment by filing arguments and any relevant documentation within 30 calendar days of the earlier of the receipt of this letter or of publication in the **Federal Register**.[15] Absent extraordinary circumstances, the Bureau will debar you.[16] Within 90 days of receipt of any opposition to your suspension and proposed debarment, the Bureau, in the absence of extraordinary circumstances, will provide you with notice of its decision to debar.[17] If the Bureau decides to debar you, its decision will become effective upon the earlier of your receipt of a debarment notice or publication of the decision in the **Federal Register**.[18]

C. Effect of Debarment

If and when your debarment becomes effective, you will be prohibited from participating in activities associated with or related to the schools and libraries support mechanism for at least three years from the date of debarment.[19] The Bureau may, if necessary to protect the public interest, extend the debarment period.[20]

Please direct any responses to the following address: Diana Lee, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C443, 445 12th Street, SW., Washington, DC 20554.

If you submit your response via hand-delivery or non-United States Postal Service

[1] *United States* v. *Bokhari et al,* Case No. 04–CR–0056–RTR, Superceding Indictment (E.D.WI filed September 24, 2004 and entered October 4, 2004) (''Bokhari Superceding Indictment''); *United States* v. *Haider Bokhari*, Case No. 04–CR–0056–RTR, Judgment (E.D.WI filed January 28, 2005 and entered February 3, 2005).

[2] 47 CFR 54.521; 47 CFR 0.111(a)(14) (delegating to the Enforcement Bureau authority to resolve universal service suspension and debarment proceedings pursuant to 47 CFR 54.521).

[3] 47 CFR 54.521(a)(4). See Schools and Libraries Universal Service Support Mechanism, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9225–9227, ¶¶ 67–74 (2003) (''Second Report and Order'').

[4] Second Report and Order, 18 FCC Rcd at 9225, ¶ 67; 47 U.S.C. 254; 47 CFR 54.502–54.503; 47 CFR 54.521(a)(4).

[5] Second Report and Order, 18 FCC Rcd at 9226, ¶ 69; 47 CFR 54.521(e)(1).

[6] Second Report and Order, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(4).

[7] Second Report and Order, 18 FCC Rcd at 9226, ¶ 70.

[8] 47 CFR 54.521(e)(5).

[9] See Second Report and Order, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(5), 54.521(f).

[10] Second Report and Order, 18 FCC Rcd at 9225, ¶ 66. The Commission's debarment rules define a ''person'' as ''[a]ny individual, group of individuals, corporation, partnership, association, unit of government or legal entity, however, organized.'' 47 CFR. 54.521(a)(6).

[11] See Bokhari Superceding Indictment at 5–13.

[12] See Bokhari Superceding Indictment at 16–19, 21.

[13] Second Report and Order, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(2)(i).

[14] ''Causes for suspension and debarment are the conviction of or civil judgment for attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice and other fraud or criminal offense arising out of activities associated with or related to the schools and libraries support mechanism.'' 47 CFR 54.521(c). Such activities ''include the receipt of funds or discounted services through the schools and libraries support mechanism, or consulting with, assisting, or advising applicants or service providers regarding schools and libraries support mechanism described in this section ([47 CFR 54.500 *et seq.*).'' 47 CFR 54.521(a)(1).

[15] See Second Report and Order, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(2(i), 54.521(e)(3).

[16] Second Report and Order, 18 FCC Rcd at 9227, ¶ 74.

[17] See id., 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(5).

[18] Id. The Commission may reverse a debarment, or may limit the scope or period of debarment upon a finding of extraordinary circumstances, following the filing of a petition by you or an interested party or upon motion by the Commission. 47 CFR 54.521(f).

[19] Second Report and Order, 18 FCC Rcd at 9225, ¶ 67; 47 CFR 54.521(d), 54.521(g).

[20] Id.

delivery (*e.g.*, Federal Express, DHL, etc.), please send the response to Ms. Lee at the following address: Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, MD 20743.

If you have any questions, please contact Ms. Lee via mail, by telephone at (202) 418–0843 or by e-mail at *diana.lee@fcc.gov.*

Sincerely yours,

William H. Davenport,

Chief, Investigations and Hearings Division, Enforcement Bureau.

cc: Carla Stern, Assistant United States Attorney, DOJ (e-mail); Kristy Carroll, Esq., USAC (e-mail).

[FR Doc. 05–4723 Filed 3–9–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–05–81–B (Auction No. 81); DA 05–505]

Applicants for Low Power Television Construction Permits To Be Awarded in Auction No. 81 Must Submit Supplemental Information by March 18, 2005

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document notifies applicants in the upcoming auction of construction permits for certain low power television (LPTV), television translator and Class A Television broadcast stations (Auction No. 81) that they must provide to the Commission their FCC Registration Number (FRN) by March 18, 2005 in order to participate in the auction. Auction No. 81 is scheduled to commence on September 14, 2005.

DATES: FCC Registration Number (FRN) must be submitted by March 18, 2005.

ADDRESSES: FRN may be sent by electronic mail to the following address: *auction81@fcc.gov.* In the alternative, an applicant may send an FRN by facsimile to Kathryn Garland at (717) 338–2850.

FOR FURTHER INFORMATION CONTACT: FCC Technical Support at 1–877–480–3201 option 9, (202) 414–1250, or (202) 414–1255 (TTY). Hours of service: Monday through Friday 8 a.m. to 6 p.m. e.t. *For legal questions:* Lynne Milne at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice released February 28, 2005, *Auction No. 81 Supplemental Public Notice.* The complete text of the *Auction No. 81 Supplemental Public Notice,* is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The *Auction No. 81 Supplemental Public Notice* and related Commission documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 488–5300, facsimile (202) 488–5563, or you may contact BCPI at its Web site: *http://www.BCPIWEB.com.* When ordering documents from BCPI, please provide the appropriate FCC document number (for example, DA 05–505 for the Auction No. 81 Supplemental Public Notice). The *Auction No. 81 Supplemental Public Notice* and related documents are also available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions/81/.*

I. General Information

1. On June 23, 2000, the Mass Media Bureau and Wireless Telecommunications Bureau (the ''Bureaus'') announced a limited auction filing window for certain low power television (LPTV), television translator, and Class A television broadcast stations. *See* Notice and Filing Requirements Regarding July 31 through August 4, 2000 Limited Low Power Television/Television Translator/Class A Television Auction Filing Window, *Public Notice,* 65 FR 46713 (July 31, 2000), 65 FR 39619 (June 27, 2000). Following the close of that filing window, the Federal Communications Commission (''FCC'') adopted a rule requiring all persons and entities doing business with the FCC to acquire a unique identifying number called the FCC Registration Number (FRN) and to provide it with all applications or feeable filings, as well as other transactions involving payment of money. This requirement became effective on December 3, 2001. *Use of an FRN is mandatory for all applicants for Auction No. 81 so that they may log on to the FCC Auctions 175 Application & Search system and continue to participate in the auction process.*

2. If an Auction No. 81 applicant does not submit its FRN pursuant to this public notice, the Commission will not review its short-form application (FCC Form 175). A separate Public Notice released February 28, 2005, *Low Power Television Auction No. 81 Scheduled for September 14, 2005; Auction No. 81 Applicants Must Provide Supplemental Information by March 18, 2005; Comment Sought On Reserve Prices or Minimum Opening Bids and Other Procedures,* DA 05–506, (''Auction No. 81 Comment Public Notice'') announces that the bidding for Auction No. 81 will start on September 14, 2005. That Public Notice also lists in Attachment A the applicants that are required to submit an FRN pursuant to the procedures set forth in this public notice no later than 5 p.m. eastern time (e.t.), Friday, March 18, 2005.

3. To submit an FRN for association with a pending application, each listed applicant must provide its precise applicant name and FRN in an e-mail to *auction81@fcc.gov* or fax this information to Kathryn Garland at (717) 338–2850. Note that, in some cases, an entity may have obtained multiple FRNs; however, each applicant must submit only the particular FRN that is associated with the Taxpayer Identification Number (TIN) that it used in connection with the initial submission of its short-form application (FCC Form 175) in June of 2000.

4. Applicants for Auction No. 81 *must* submit this information to the Commission no later than 5 p.m. e.t., Friday, March 18, 2005, in order to maintain status to participate in this auction. Any applicant that is listed in Attachment A of the *Auction No. 81 Comment Public Notice* (DA 05–506) which fails to submit its FRN exactly as prescribed by this public notice by the March 18th deadline will have its pending engineering proposals dismissed and will be ineligible to participate in Auction No. 81.

5. Applicants that do not have an FRN must obtain one by registering using the FCC's Commission Registration System (CORES). To access CORES, point your Web browser to the FCC Auctions page at *http://wireless.fcc.gov/auctions/* and click the CORES link under Related Sites. Next, follow the directions provided to register and receive your FRN. Be sure to retain this number and password and keep such information strictly confidential.

Federal Communications Commission.

Gary D. Michaels,

Deputy Chief, Auction and Spectrum Access Division, WTB.

[FR Doc. 05–4726 Filed 3–9–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–05–81–C (Auction No. 81); DA 05–506]

Low Power Television Auction No. 81 Scheduled for September 14, 2005; Auction No. 81 Applicants Must Provide Supplemental Information by March 18, 2005; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedures

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the auction of construction permits for certain low power television (LPTV), television translator and Class A Television broadcast stations scheduled to commence on September 14, 2005 (Auction No. 81). This document also notifies Auction No. 81 applicants that they must provide their FCC Registration Number (FRN) and seeks comment on reserve prices or minimum opening bids and other procedures for Auction No. 81.

DATES: Comments are due on or before March 18, 2005, and reply comments are due on or before March 25, 2005.

ADDRESSES: Comments and reply comments must be sent by electronic mail to the following address: *auction81@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For legal questions: Lynne Milne at (202) 418–0660. For general auction questions: Jeff Crooks at (202) 418–0660 or Lisa Stover at (717) 338–2888. For service rule questions, contact the Video Division, Media Bureau, as follows: Shaun Maher or Hossein Hashemzadeh at (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice released February 28, 2005, *Auction No. 81 Comment Public Notice.* The complete text of the *Auction No. 81 Comment Public Notice,* including an attachment and any related Commission documents is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington DC 20554. The *Auction No. 81 Comment Public Notice* and related Commission documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone (202) 488–5300, facsimile (202) 488–5563, or you may contact BCPI at its Web site: *http://www.BCPIWEB.com.* When ordering documents from BCPI, please provide the appropriate FCC document number (for example, DA 05–506 for the Auction No. 81 Comment Public Notice). The *Auction No. 81 Comment Public Notice* and related documents are also available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions/81/.*

I. General Information

1. By the *Auction No. 81 Comment Public Notice,* the Wireless Telecommunications Bureau (the ''Bureau'') and the Media Bureau (collectively referred to as the ''Bureaus'') announce the auction of construction permits for certain LPTV, television translator and Class A Television broadcast stations, scheduled to commence on September 14, 2005 (Auction No. 81). The construction permits to be auctioned are the subject of pending, mutually exclusive applications for referenced broadcast services for which the Commission has not approved settlement agreements or engineering amendments. Participation in this auction will be limited to those applicants for construction permits identified in Attachment A of the *Auction No. 81 Comment Public Notice.* Applicants will be eligible to bid only on those construction permits as set forth in Attachment A of the *Auction No. 81 Comment Public Notice.*

2. *Supplemental Information Required:* The applicants listed in Attachment A of the *Auction No. 81 Comment Public Notice* may only continue to participate in Auction No. 81 if they provide their FCC Registration Number (FRN) no later than 5 p.m. Eastern Time (ET) on March 18, 2005, in accordance with public notice, *Applicants for Low Power Television Construction Permits to be Awarded in Auction No. 81 Must Submit Supplemental Information by March 18, 2005,* DA 05–505, which was released concurrently with this public notice, February 28, 2005. If an applicant fails to provide this information in the manner and time specified in that public notice, its engineering proposal(s) will be dismissed and it will not be permitted to participate in the auction.

3. Attachment A of the *Auction No. 81 Comment Public Notice* sets forth the mutually exclusive applicant groups (''MX Groups'') accompanied by their respective minimum opening bids and upfront payments. Attachment A of the *Auction No. 81 Comment Public Notice* also lists the names of the applicants for construction permits in each MX Group. All MX Groups identified in Attachment A of the *Auction No. 81 Comment Public Notice* have been subject to competition through the opening and closing of the relevant period for filing competing applications. All applications within an identified MX Group are directly mutually exclusive with one another, and therefore a single construction permit will be auctioned for each MX Group identified in Attachment A of the *Auction No. 81 Comment Public Notice.* An applicant may submit only one bid per round for a construction permit for a particular MX group, even if the applicant has submitted more than one engineering proposal that is included in the MX group.

Note: In no instance will more than a single construction permit be awarded to a winning bidder for a particular MX group, even if a winning bidder has submitted more than one engineering proposal that is included in that MX group.

4. Auction No. 81 will use the FCC's Integrated Spectrum Auction System (''ISAS'' or ''FCC Auction System''), an extensive redesign of the previous auction application and bidding systems. The redesign includes FCC Form 175 application enhancements such as discrete data elements in place of free-form exhibits and improved data accuracy through automated checking of FCC Form 175 applications. Enhancements have also been made to the FCC Form 175 application search function. The auction bidding system has also been updated for easier navigation, customizable results, and improved functionality.

5. Section 309(j)(3) of the Communications Act of 1934, as amended, requires the Commission to ''ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed * * * before issuance of bidding rules, to permit notice and comment on proposed auction procedures * * *.'' Consistent with the provisions of Section 309(j)(3) and to ensure that potential bidders have adequate time to familiarize themselves with the specific rules that will govern the day-to-day conduct of an auction, the Commission directed the Bureaus, under existing delegated authority, to seek comment on a variety of auction-specific procedures prior to the start of each auction. The Bureaus therefore seek comment on the following issues relating to Auction No. 81.

II. Auction Structure

A. Simultaneous Multiple-Round Auction Design

6. We propose to award all construction permits included in Auction No. 81 in a simultaneous multiple-round auction. As described further below, this methodology offers every construction permit for bid at the same time with successive bidding rounds in which bidders may place bids. We seek comment on this proposal.

B. Upfront Payment and Bidding Eligibility

7. The Bureaus have delegated authority and discretion to determine an appropriate upfront payment for each construction permit being auctioned, taking into account such factors as the efficiency of the auction process and the potential value of similar spectrum. As described further below, the upfront payment is a refundable deposit made by each bidder to establish eligibility to bid on LPTV, television translator, and Class A television station construction permits. Upfront payments related to the specific spectrum subject to auction protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the auction. With these guidelines in mind, we propose the schedule of upfront payments contained in Attachment A of the *Auction No. 81 Comment Public Notice*. We seek comment on this proposal.

8. We further propose that the amount of the upfront payment submitted by a bidder will determine the maximum number of bidding units on which a bidder may place bids. This limit is a bidder's initial bidding eligibility. Each construction permit is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A of the *Auction No. 81 Comment Public Notice*, on a bidding unit per dollar basis. Bidding units for a given construction permit do not change as prices rise during the auction. A bidder's upfront payment is not attributed to specific construction permits. Rather, a bidder may place bids on any combination of construction permits as long as the total number of bidding units associated with those construction permits does not exceed its current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units it may wish to bid on (or hold provisionally winning bids on) in any single round, and submit an upfront payment amount covering that total number of bidding units. Provisionally winning bids are bids that would become final winning bids if the auction were to close in that given round. We seek comment on this proposal.

C. Activity Rules

9. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction. A bidder that does not satisfy the activity rule either will lose bidding eligibility in the next round or must use an activity rule waiver (if any remain).

10. We propose to divide the auction into two stages, each characterized by a different activity requirement. The auction will start in Stage One. We propose that the auction generally will advance from Stage One to Stage Two when the auction activity level, as measured by the percentage of bidding units receiving new provisionally winning bids, is approximately twenty percent or below for three consecutive rounds of bidding. However, we further propose that the Bureaus retain the discretion to change stages unilaterally by announcement during the auction. In exercising this discretion, the Bureaus will consider a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentage of construction permits (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. We seek comment on these proposals.

11. For Auction No. 81, we propose the following activity requirements:

Stage One: In each round of the first stage of the auction, a bidder desiring to maintain its current bidding eligibility is required to be active on construction permits representing at least 80 percent of its current bidding eligibility. Failure to maintain the requisite activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, a bidder's reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity by five-fourths (5/4).

Stage Two: In each round of the second stage, a bidder desiring to maintain its current bidding eligibility is required to be active on 95 percent of its current bidding eligibility. During Stage Two, a bidder's reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity by twenty-nineteenths (20/19).

12. We seek comment on these proposals. Commenters that believe these activity rules should be modified should explain their reasoning and comment on the desirability of an alternative approach. Commenters are advised to support their claims with analyses and suggested alternative activity rules.

D. Activity Rule Waivers and Reducing Eligibility

13. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular construction permit. Activity rule waivers can be either proactive or automatic and are principally a mechanism for auction participants to avoid the loss of bidding eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

14. The FCC Auction System assumes that bidders with insufficient activity would prefer to apply an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round where a bidder's activity level is below the minimum required unless: (1) The bidder has no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirement.

Note: If a bidder has no waivers remaining and does not satisfy the required activity level, its eligibility will be permanently reduced, possibly eliminating the bidder from further bidding in the auction.

15. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding round by using the ''reduce eligibility'' function in the FCC Auction System. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described above. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

16. A bidder may apply an activity rule waiver proactively as a means to

keep the auction open without placing a bid. If a bidder proactively applies an activity rule waiver (using the ''apply waiver'' function in the FCC Auction System) during a bidding round in which no bids or withdrawals are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver applied by the FCC Auction System in a round in which there are no new bids or withdrawals will not keep the auction open.

Note: Applying a waiver is irreversible; once a proactive waiver is submitted that waiver cannot be unsubmitted, even if the round has not yet closed.

17. We propose that each bidder in Auction No. 81 be provided with three activity rule waivers that may be used at the bidder's discretion during the course of the auction as set forth above. We seek comment on this proposal.

E. Information Relating to Auction Delay, Suspension, or Cancellation

18. For Auction No. 81, we propose that, by public notice or by announcement during the auction, the Bureaus may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureaus, in their sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureaus to delay or suspend the auction. We emphasize that exercise of this authority is solely within the discretion of the Bureaus, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers. We seek comment on this proposal.

III. Bidding Procedures

A. Round Structure

19. The Commission will conduct Auction No. 81 over the Internet. Alternatively, telephonic bidding will also be available. The toll free telephone number through which telephonic bidding may be accessed will be provided to bidders.

20. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of the auction. The simultaneous multiple-round format will consist of sequential bidding rounds, each followed by the release of round results. Details regarding the location and format of round results will be included in the same public notice.

21. The Bureaus have discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureaus may increase or decrease the amount of time for the bidding rounds and review rounds, or the number of rounds per day, depending upon the bidding activity level and other factors. We seek comment on this proposal.

B. Reserve Price or Minimum Opening Bid

22. Section 309(j) calls upon the Commission to prescribe methods for establishing a reasonable reserve price or a minimum opening bid amount when FCC licenses or construction permits are subject to auction (*i.e.*, because the Commission has accepted mutually exclusive applications for those construction permits), unless the Commission determines that a reserve price or minimum opening bid amount is not in the public interest. Consistent with this mandate, the Commission has directed the Bureaus to seek comment on the use of minimum opening bid amounts and/or reserve price prior to the start of each auction of broadcast construction permits.

23. Normally, a reserve price is an absolute minimum price below which an item will not be sold in a given auction. Reserve prices can be either published or unpublished. A minimum opening bid amount, on the other hand, is the minimum bid price set at the beginning of the auction below which no bids are accepted. It is generally used to accelerate the competitive bidding process. Also, the auctioneer often has the discretion to lower the minimum opening bid amount later in the auction. It is also possible for the minimum opening bid amount and the reserve price to be the same amount.

24. In light of Section 309(j)'s requirements, the Bureaus propose to establish minimum opening bid amounts for Auction No. 81. The Bureaus believe a minimum opening bid amount, which has been used in other auctions, is an effective bidding tool.

25. For Auction No. 81, the proposed minimum opening bid for each MX Group, as listed in Attachment A of the *Auction No. 81 Comment Public Notice*, was determined by taking into account various factors related to the efficiency of the auction and the potential value of the spectrum, including the type of service and class of facility offered, market size, population covered by the proposed LPTV, television translator or Class A Television facility, industry cash flow data and recent broadcast transactions. We seek comment on this proposal.

26. If commenters believe that these minimum opening bid amounts will result in substantial numbers of unsold construction permits, or are not reasonable amounts, or should instead operate as reserve prices, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested reserve prices or minimum opening bid amount levels or formulas. In establishing the minimum opening bid amounts, we particularly seek comment on such factors as the potential value of the spectrum being auctioned including the type of service and class of facility offered, market size, population covered by the proposed LPTV, television translator or Class A television facility, industry cash flow and recent broadcast transactions and other relevant factors that could reasonably have an impact on valuation of the broadcast spectrum. We also seek comment on whether, consistent with Section 309(j), the public interest would be served by having no minimum opening bid amount or reserve price.

C. Minimum Acceptable Bid Amounts and Bid Increments

27. In each round, eligible bidders will be able to place bids on a given construction permit in any of nine different amounts. The FCC Auction System interface will list the nine acceptable bid amounts for each construction permit.

28. The minimum acceptable bid amount for a construction permit will be equal to its minimum opening bid amount until there is a provisionally winning bid for the construction permit. After there is a provisionally winning bid for a construction permit, the minimum acceptable bid amount for that construction permit will be equal to the amount of the provisionally winning bid plus an additional amount. The minimum acceptable bid amount will be calculated by multiplying the provisionally winning bid amount times one plus the minimum acceptable bid percentage—*e.g.,* if the minimum acceptable bid percentage is 10 percent, the minimum acceptable bid amount will equal (provisionally winning bid amount) * * * (1.10), rounded. We will round the result using our standard rounding procedures.

29. The nine acceptable bid amounts for each construction permit consist of

the minimum acceptable bid amount and additional amounts calculated using the minimum acceptable bid amount and the bid increment percentage. We will round the results using our standard rounding procedures. The first additional acceptable bid amount equals the minimum acceptable bid amount times one plus the bid increment percentage, rounded—*e.g.,* if the increment percentage is 10 percent, the calculation is (minimum acceptable bid amount) * * * (1 + 0.10), rounded, or (minimum acceptable bid amount) * * * 1.10, rounded; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, rounded, or (minimum acceptable bid amount) * * * 1.20, rounded; the third additional acceptable bid amount equals the minimum acceptable bid amount times one plus three times the bid increment percentage, rounded, or (minimum acceptable bid amount) * * * 1.30, rounded; etc. Note that the bid increment percentage need not be the same as the minimum acceptable bid percentage.

30. In the case of a construction permit for which the provisionally winning bid has been withdrawn, the minimum acceptable bid amount will equal the second highest bid received for the construction permit.

31. For Auction No. 81, the Bureaus propose to use a minimum acceptable bid percentage of 10 percent. This means that the minimum acceptable bid amount for a construction permit will be approximately 10 percent greater than the provisionally winning bid amount for the construction permit.

32. The Bureaus retain the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid percentage, and the bid increment percentage if it determines that circumstances so dictate. The Bureaus will do so by announcement in the FCC Auction System during the auction. We seek comment on these proposals.

D. Provisionally Winning Bids

33. At the end of a bidding round, a provisionally winning bid amount for each construction permit will be determined based on the highest bid amount received for the construction permit. In the event of identical high bid amounts being submitted on a construction permit in a given round (*i.e.,* tied bids), we propose to use a random number generator to select a single provisionally winning bid from among the tied bids. If the auction were to end with no higher bids being placed for that construction permit, the winning bidder would be the one that placed the selected provisionally winning bid. However, the remaining bidders, as well as the provisionally winning bidder, can submit higher bids in subsequent rounds. If any bids are received on the construction permit in a subsequent round, the provisionally winning bid again will be determined by the highest bid amount received for the construction permit.

34. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the same construction permit at the close of a subsequent round, unless the provisionally winning bid is withdrawn. Bidders are reminded that provisionally winning bids confer credit for activity.

E. Information Regarding Bid Withdrawal and Bid Removal

35. For Auction No. 81, we propose the following bid removal and bid withdrawal procedures. Before the close of a bidding round, a bidder has the option of removing any bid placed in that round. By removing selected bids in the FCC Auction System, a bidder may effectively ''unsubmit'' any bid placed within that round. A bidder removing a bid placed in the same round is not subject to a withdrawal payment. Once a round closes, a bidder may no longer remove a bid.

36. A bidder may withdraw its provisionally winning bids using the ''withdraw bids'' function in the FCC Auction System. A bidder that withdraws its provisionally winning bid(s) is subject to the bid withdrawal payment provisions of the Commission rules. We seek comment on these bid removal and bid withdrawal procedures.

37. In the *Part 1 Third Report and Order,* 63 FR 770, January 7, 1998, the Commission explained that allowing bid withdrawals facilitates efficient aggregation of licenses and construction permits and the pursuit of efficient backup strategies as information becomes available during the course of an auction. The Commission noted, however, that, in some instances, bidders may seek to withdraw bids for improper reasons. The Bureaus, therefore, have discretion, in managing the auction, to limit the number of withdrawals to prevent any bidding abuses. The Commission stated that the Bureaus should assertively exercise their discretion, consider limiting the number of rounds in which bidders may withdraw bids, and prevent bidders from bidding on a particular construction permit if the Bureaus find that a bidder is abusing the Commission's bid withdrawal procedures.

38. Applying this reasoning, we propose to limit each bidder in Auction No. 81 to withdrawing provisionally winning bids in no more than one round during the course of the auction. To permit a bidder to withdraw bids in more than one round may encourage insincere bidding or the use of withdrawals for anti-competitive purposes. The round in which withdrawals may be used will be at the bidder's discretion; withdrawals otherwise must be in accordance with the Commission's rules. There is no limit on the number of provisionally winning bids that may be withdrawn in the round in which withdrawals are used. Withdrawals will remain subject to the bid withdrawal payment provisions specified in the Commission's rules. We seek comment on this proposal.

F. Stopping Rule

39. The Bureaus have discretion ''to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time.'' For Auction No. 81, the Bureaus propose to employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all construction permits remain available for bidding until bidding closes simultaneously on all construction permits.

40. Bidding will close simultaneously on all construction permits after the first round in which no bidder submits any new bids, applies a proactive waiver, or places any withdrawals. Thus, unless circumstances dictate otherwise, bidding will remain open on all construction permits until bidding stops on every construction permit.

41. However, the Bureaus propose to retain the discretion to exercise any of the following options during Auction No. 81:

i. Use a modified version of the simultaneous stopping rule. The modified stopping rule would close the auction for all construction permits after the first round in which no bidder applies a waiver, places a withdrawal or submits any new bids on any construction permit for which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule. The Bureaus further seek comment on whether this modified stopping rule should be used

at any time or only in stage two of the auction.

ii. Keep the auction open even if no bidder submits any new bids, applies a waiver or places any withdrawals. In this event, the effect will be the same as if a bidder had applied a waiver. The activity rule, therefore, will apply as usual and a bidder with insufficient activity will either lose bidding eligibility or use a remaining activity rule waiver.

iii. Declare that the auction will end after a specified number of additional rounds (''special stopping rule''). If the Bureaus invoke this special stopping rule, it will accept bids in the specified final round(s) and the auction will close.

42. The Bureaus propose to exercise these options only in certain circumstances, for example, where the auction is proceeding very slowly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time. Before exercising these options, the Bureaus are likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of construction permits where there is still a high level of bidding activity. We seek comment on these proposals.

III. Due Diligence

43. Potential bidders are solely responsible for investigating and evaluating all technical and market place factors that may have a bearing on the value of the broadcast facilities in this auction. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC permittee in the broadcast service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does an FCC construction permit or license constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding as they would with any new business venture.

44. Potential bidders are strongly encouraged to conduct their own research prior to Auction No. 81 in order to determine the existence of pending proceedings that might affect their decisions regarding participation in the auction. Participants in Auction No. 81 are strongly encouraged to continue such research during the auction.

45. Potential bidders should note that LPTV and TV translator stations are authorized with ''secondary'' frequency use status. These stations may not cause interference to, and must accept interference from, full service television stations, certain land mobile radio operations, and other primary services. *See, e.g.,* 47 CFR 74.703, 74.709 and 90.303.

IV. Prohibition of Collusion

46. Auction No. 81 applicants are reminded that the anti-collusion rules found at §§ 1.2105(c) and 73.5002(d) of the Commission's rules are in effect. These rules prohibit applicants competing for construction permits in either the same geographic license area or the same MX Group from communicating with each other during the auction about bids, bidding strategies, or settlements unless they have identified each other as parties with whom they have entered into agreements under § 1.2105(a)(2)(viii). For Auction No. 81, this prohibition became effective at the short-form application filing deadline on August 4, 2000, and will end on the post-auction down payment deadline, which will be announced in a future public notice. This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid. For purposes of this prohibition, § 1.2105(c)(7)(i) defines applicant as including all controlling interests in the entity submitting a short-form application to participate in the auction, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application, and all officers and directors of that entity. If parties had agreed in principle on all material terms, those parties must have been identified on the short-form application under § 1.2105(c), even if the agreement had not been reduced to writing. If parties had not agreed in principle by the filing deadline, an applicant should not have included the names of those parties on its application, and must not have continued negotiations with other applicants for licenses in the same geographic area.

47. By electronically submitting their FCC Form 175 short-form applications, applicants certified their compliance with §§ 1.2105(c) and 73.5002. In addition, § 1.65 of the Commission's Rules requires an applicant to *maintain* the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, § 1.65 requires an auction applicant to notify the Commission of any violation of the anti-collusion rules upon learning of such violation. Applicants are therefore required by § 1.65 to make such notification to the Commission immediately upon discovery. In addition, § 1.2105(c)(6) requires that any applicant that makes or receives a communication prohibited by § 1.2105(c) must report such communication to the Commission in writing immediately, and in no case later than five business days after the communication occurs.

V. Conclusion

Comments are due on or before March 18, 2005, and reply comments are due on or before March 25, 2005. Because of the disruption of regular mail and other deliveries in Washington, DC, the Bureaus require that all comments and reply comments be filed electronically. Comments and reply comments, and copies of material filed with the Commission pertaining to Auction No. 81, must be sent by electronic mail to the following address: *auction81@fcc.gov.* The electronic mail containing the comments or reply comments must include a subject or caption referring to Auction No. 81 Comments and the name of the commenting party. The Bureaus request that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Copies of comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554, and will also be posted on the Web page for Auction No. 81 at *http://wireless.fcc.gov/auctions/81.* In addition, the Bureaus request that commenters fax a courtesy copy of their comments and reply comments to the attention of Kathryn Garland at (717) 338–2850.

48. This proceeding has been designated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one

or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules.

Federal Communications Commission.

Gary D. Michaels,

Deputy Chief, Auction and Spectrum Access Division, WTB.

[FR Doc. 05–4727 Filed 3–9–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: Background. Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–I's and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer – Michelle Long—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

OMB Desk Officer–Mark Menchik—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, or email to mmenchik@omb.eop.gov.

Final approval under OMB delegated authority of the extension for three years, with minor revision of the following report:

Report title: Ongoing Intermittent Survey of Households

Agency form number: FR 3016

OMB Control number: 7100–0150

Frequency: On occasion

Reporters: Households and individuals

Annual reporting hours: 658 hours

Estimated average hours per response: Division of Research & Statistics, 1.33 minutes; Division of Consumer & Community Affairs, 3 minutes; Other divisions, 5 minutes; and Non–SRC surveys, 90 minutes.

Number of respondents: 600

General description of report: This information collection is voluntary (12 U.S.C. 225a, 263, and 15 U.S.C. 1691b). No issue of confidentiality normally arises because names and any other characteristics that would permit personal identification of respondents are not reported to the Board. However, exemption 6 of the Freedom of Information Act (5 U.S.C. 552(b)(6)) would exempt this information from disclosure.

Abstract: The Federal Reserve uses this voluntary survey to obtain household–based information specifically tailored to the Federal Reserve's policy, regulatory, and operational responsibilities. The University of Michigan's Survey Research Center (SRC) includes survey questions on behalf of the Federal Reserve in an addendum to their regular monthly Survey of Consumer Attitudes and Expectations. The SRC conducts the survey by telephone with a sample of 500 households and includes questions of special interest to Board staff intermittently, as needed. The frequency and content of the questions depend on changing economic, regulatory, and legislative developments.

Current actions: On December 29, 2004, the Federal Reserve issued for public comment proposed revisions to allow contractors, either the SRC or others, to use broader surveying techniques, such as mall intercept testing, focus groups, and guided discussions (69 FR 78027). The Federal Reserve did not receive any comments. The changes will be implemented as proposed.

Final approval under OMB delegated authority of the extension for three years, without revision of the following report:

Report title: Recordkeeping Requirements associated with the Real Estate Lending Standards Regulation for State Member Banks

Agency form number: Reg H–5

OMB control number: 7100–0261

Frequency: Aggregate report, quarterly; policy statement, annually

Reporters: State member banks

Annual reporting hours: 19,660 hours

Estimated average hours per response: Aggregate report, 5 hours; policy statement, 20 hours

Number of respondents: 935

General description of report: This information collection is mandatory (12 U.S.C. 1828(o)) and is not given confidential treatment.

Abstract: State member banks must adopt and maintain a written real estate lending policy. Also, banks must identify their loans in excess of the supervisory loan–to–value limits and report (at least quarterly) the aggregate amount of the loans to the bank's board of directors.

Board of Governors of the Federal Reserve System, March 4, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 05–4689 Filed 3–9–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 24, 2005.

A. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Douglas Williams and Zella Irene Williams, both of Portland, Tennessee; to acquire additional voting shares of First Farmers Bancshares, Inc., Portland, Tennessee, and thereby indirectly acquire additional voting shares of The Farmers Bank, Portland, Tennessee.

B. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Everett D. Lawrence, Marshall, Illinois, Lawrence Gravel, Phyllis Lawrence, and Kim Schmidt, acting in concert to retain voting shares of

Preferred Bancorp, Inc. Casey, Illinois, and thereby indirectly retain voting shares of Preferred Bank, Casey, Illinois.

Board of Governors of the Federal Reserve System, March 4, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–4663 Filed 3–9–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 4, 2005.

A. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Security Bank Corporation, Macon, Georgia; to acquire 100 percent of the voting shares of SouthBank, Woodstock, Georgia.

Board of Governors of the Federal Reserve System, March 4, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–4662 Filed 3–9–05; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

[FAI N01]

Federal Acquisition Institute/Defense Acquisition University Vendor Meeting

AGENCY: Office of the Chief Acquisition Officer, GSA.

ACTION: Notice of meeting.

SUMMARY: The Federal Acquisition Institute (FAI) and the Defense Acquisition University (DAU) will hold a vendor meeting to provide information on shared initiatives and activities. FAI will describe plans and requirements for training related services under the Acquisition Workforce Training Fund (AWTF). DAU will provide an update on planned changes to contracting courses.

Agencies are required to report and deposit five percent of administrative fees from Governmentwide contracts and multiple award schedules into the AWTF. Its purpose is to ensure that the Federal acquisition workforce adapts to fundamental changes in Federal acquisition and acquires new skills and perspectives to contribute effectively in the changing environment.

FAI and DAU work together to address many of the acquisition workforce training needs of the Federal Government. Partnering with DAU enables FAI to build upon existing DAU training, develop Governmentwide curriculum, and promote a cohesive and agile workforce. At the vendor meeting, DAU will present information on recent contracting curriculum changes and review current curriculum development efforts. FAI will discuss how the curriculum changes impact the Federal acquisition workforce.

Who Should Attend: Training developers, vendors with Commercial-Off-The-Shelf (COTS) training products, vendors with capabilities related to the full Instructional System Design (ISD) methodologies, and acquisition training experts.

DATES: The meeting will be held March 17, 2005, from 1 p.m. to 3 p.m.

ADDRESSES: The meeting will be held at the GS Building, GSA Auditorium, 1800 F Street, NW, Washington, DC. Register by e-mail: *Jamie.ready@gsa.gov*, or call (703) 558–4092.

FOR FURTHER INFORMATION CONTACT: Ms. Jamie Ready, by phone at (703) 558–4092, or by e-mail at *Jamie.ready@gsa.gov*.

Dated: March 4, 2005.

Pat Brooks,

Director, Office of National and Regional Acquisition Development.

[FR Doc. 05–4636 Filed 3–9–05; 8:45 am]

BILLING CODE 6820–61–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–05BJ]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–371–5976 or send comments to Sandi Gambescia, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

National Breast and Cervical Cancer Early Detection Program (NBCCEDP) Case Management Survey—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and brief description of the proposed project: The impact of case management policy on the National Breast and Cervical Cancer Early Detection Program (NBCCEDP) operations and clients is not well understood to date. Evaluation results thus far have produced a general, qualitative understanding of how case management has been implemented by grantees. Questions remain, however, regarding: (1) The number of grantees who have implemented different types of financial and service delivery models of case management; (2) costs associated with different approaches to case management; and (3) whether or not case management activities have a positive impact on clients. This evaluation project will focus on the first and second questions.

The purpose of the case management assessment will be to gather some quantitative and descriptive information about how the case management component has been implemented by all NBCCEDP grantees. Results of the evaluation should assist CDC in developing case management training, providing technical assistance, and assessing the costs of case management. A standardized written survey will be used to collect descriptive information from all NBCCEDP grantees on components of case management program activities including: organizational structure, financial and service delivery models, staffing, and needs for training or technical assistance. A total of 68 Breast and Cervical Cancer Program Directors will be asked to complete the survey, with assistance from program Case Management Coordinators as needed. The survey is expected to take an average of 1.5 hours to complete. The only cost to respondents is their time. This is a one-time data collection effort. The total annualized burden for respondents is 102 hours.

ANNUALIZED BURDEN TABLE

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Program Directors	68	1	1	68
Case Management Coordinators	68	1	30/60	34
Total	136			102

Dated: February 25, 2005.

Betsey Dunaway,

Acting Reports Clearance Officer, Office of the Chief Science Officer, Centers for Disease Control and Prevention.

[FR Doc. 05–4678 Filed 3–9–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–05–0134]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–371–5976 or send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Foreign Quarantine Regulations, OMB No. 0920–0134—Revision—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC). Section 361 of the Public Health Service (PHS) Act (42 U.S.C. 264) authorizes the Secretary of Health and Human Services (DHHS) to make and enforce regulations necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the United States.

Legislation and the existing regulations governing foreign quarantine activities (42 CFR part 71) authorize quarantine officers and other personnel to inspect and undertake necessary control measures with respect to conveyances, persons, and shipments of animals and etiologic agents entering the United States from foreign ports in order to protect the public health.

Under foreign quarantine regulations, the master of a ship or captain of an airplane entering the United States from a foreign port is required by public health law to report certain illnesses among passengers (42 CFR 71.21)(b). In this revision, CDC proposes adding two additional reporting requirements. First, in addition to the aforementioned list of required illnesses to be reported, CDC is asking that reports be made for the following conditions, which may indicate a reportable illness: (1) Hemorrhagic fever syndrome (persistent fever accompanied by abnormal bleeding from any site); or (2) acute respiratory syndrome (severe cough or severe respiratory disease of less than 3 weeks in duration); or (3) acute onset of fever and severe headache, accompanied by stiff neck or change in level of consciousness. CDC has the authority to collect personal health information to protect the health of the public under the authority of section 301 of the Public Health Service Act (42 U.S.C.).

Second, CDC proposes adding the Passenger Locator Form currently under OMB control number 0920–0664 to OMB control number 0920–0134. The Passenger Locator Form is used to collect reliable information that assists quarantine officers in locating in a timely manner those passengers and crew who are exposed to communicable diseases of public health importance

while traveling on a conveyance. Additional burden hours for the voluntary reporting of additional certain illnesses and the Passenger Locator Form are reflected in the burden hour table below.

DHHS delegates authority to CDC to conduct quarantine control measures. Currently, with the exception of rodent inspections and the cruise ship sanitation program, inspections are performed only on those vessels and aircraft which report illness prior to arrival or when illness is discovered upon arrival. Other inspection agencies assist quarantine officers in public health screening of persons, pets, and other importations of public health significance and make referrals to PHS when indicated. These practices and procedures assure protection against the introduction and spread of communicable diseases into the United States with a minimum of recordkeeping and reporting as well as a minimum of interference with trade and travel.

Respondents include airplane pilots, ships' captains, importers, and travelers. The nature of the quarantine response would dictate which forms are completed by whom. There is no cost to respondents except for their time.

Annualized Burden Table:

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden hours
Radio reporting of death/illness	1700	1	2/60	57
Report by persons held in isolation/Surveillance	11	1	30/60	6
Report of death or Illness on carrier during stay in port	5	1	30/60	2.50
Passenger locator form:				
—Used in an outbreak of public health significance	2,700,000	1	5/60	225,000
—Used for reportingof an ill passengers	800	1	5/60	67
Requirements for admission of dogs and cats:				
Sec. 72.51(1)	5	1	3/60	.25
Sec. 72.51(2)	1,200	1	15/60	300
Application for permits to import turtles	10	1	30/60	5
Requirements for registered importers of nonhuman primates:				
Sec. 71.53(1)		1	10/60	7
Sec. 71.53(2)		4	30/60	60
Total				225,505

Dated: February 25, 2005.

Betsey Dunaway,

Acting Reports Clearance Officer, Office of the Chief Science Officer, Centers for Disease Control and Prevention.

[FR Doc. 05–4679 Filed 3–9–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–05–0494]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–371–5973 or send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Exposure to Aerosolized Brevetoxins during Red Tide Events (OMB No. 0920–0494)—Revision—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Karenia brevis (formerly *Gymnodinium breve*) is the marine dinoflagellate responsible for extensive blooms (called red tides) that form in the Gulf of Mexico. *K. brevis* produces potent toxins, called brevetoxins, that have been responsible for killing millions of fish and other marine organisms. The biochemical activity of brevetoxins is not completely understood and there is very little information regarding human health effects from environmental exposures, such as inhaling brevetoxin that has been aerosolized and swept onto the coast by offshore winds. The National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC) has recruited people who work along the coast of Florida and who are periodically occupationally exposed to aerosolized red tide toxins.

We have administered a base-line respiratory health questionnaire and conducted pre- and post-shift pulmonary function tests during a time when there is no red tide reported near the area. When a red tide developed, we administered a symptom survey and conducted pulmonary function testing (PFT). We compared (1) symptom reports before and during the red tide and (2) the changes in baseline PFT values during the work shift (differences between pre- and post-shift PFT results) without exposure to red tide with the changes in PFT values during the work shift when individuals are exposed to red tide.

Unfortunately, the exposures experienced by our study cohort have been minimal, and we plan to conduct another study (using the same symptom questionnaires and spirometry tests) during a more severe red tide event.

In addition, we are now planning to quantify the levels of cytokines in nasal exudates to assess whether they can be used to verify exposure and to demonstrate a biological effect (*i.e.*, allergic response) following inhalation of aerosolized brevetoxins. We plan to include not only the study subjects who have been involved in our earlier studies, but also any new individuals who are hired to work at the relevant beaches. As mentioned above, we have collected part data on occupational exposure to red tides. However, because we are dealing with natural phenomena and are subject literally to the tides, and because the scientific questions are evolving as we learn more, we must extend our data collection time for an additional three years. There are no costs to respondents except for their time.

Annualized Burden Table:

Respondents	Number of respondents	Number of responses per respondent	Average burden per response	Total burden
Pulmonary History Questionnaire	5	1	20/60	2
Spirometry	25	6	20/60	50
Nasal exudates collection/Nasal wash	25	6	10/60	25
Symptom Questionnaire	25	6	5/60	13
Hearing test	25	6	15/60	38
Beach Survey	5	160	5/60	67
Total				195

Dated: March 3, 2005.

Betsey Dunaway,

Acting Reports Clearance Officer, Office of the Chief Science Officer, Centers for Disease Control and Prevention.

[FR Doc. 05–4683 Filed 3–9–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–05–04KE]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 371–5976 or send an email to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC via fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Evaluation of the Sexually Transmitted Disease (STD) Faculty Expansion Program (FEP)—New—National Center for HIV, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC).

Background:

Primary care physicians play a significant role in STD prevention and control. Diagnosing, treating, reporting, partner notification, and patient counseling which emphasizes appropriate prevention messages, are all important physician contributions to STD control. In the curricula of most medical schools and residency programs, STDs and the public health role of primary care physicians in their control and prevention receive little emphasis.

To address this lack of training, CDC implemented the STD Faculty Expansion Program (FEP), which aims to improve capacity of primary care physicians to diagnose, treat, and prevent STDs. The FEP provides medical schools with funding for an additional faculty member to develop and implement curriculum for training medical students and residents, develop collaborative relationships with local health departments, and coordinate STD clinical experiences for medical students and residents. The potential long-tern impact of the STD-related training includes: Increase physician awareness of STDs, greater comfort and confidence in counseling patients, increased case reporting and partner management, and ultimately lower STD incidence.

This project is an evaluation of the FEP. Because the outcomes of greatest relevance (increased physician awareness, increased collaboration with public health departments, decreased STD incidence) will occur only after students and residents who are currently receiving the enhanced training go into practice, the evaluation focuses on intermediate outcomes as a means of assessing the program's utility and effectiveness.

Four medical schools (*e.g.* Morehouse School of Medicine, University of Alabama at Birmingham, Louisiana State University Medical Center, and the University of California Los Angeles School of Medicine) currently receive support under the FEP. The evaluation of the FEP consists of a survey of third-year medical students at the four currently funded schools and a sample of third-year medical students in all other U.S. medical schools.

A paper-and-pencil survey instrument will be administered to the students in the four FEP schools in a classroom or clinic setting or through the school mail distribution system. The survey instrument will be distributed to the sample of students from all other medical schools using express mail.

Survey topics will include:

—Hours of clinical and didactic training received during the first three years of medical school.
—Knowledge and efficacy with basic STD clinical diagnosis, treatment, and prevention.
—Students' confidence in taking a sexual history and providing specific prevention counseling to patients.
—Student familiarity with the role of the public health department in control and prevention of STDs.

A total of 850 students will be surveyed—approximately 425 at the FEP schools and 425 from all other U.S. medical schools. Evidence that the FEP's enhanced STD training is effective will include greater knowledge of and comfort in diagnosis, treatment and prevention of STDs among FEP students, recall of more time having been devoted to STDs during medical training, and greater awareness of the primary care physician's public health role in STD control and prevention. The time required to complete the survey will be approximately 25 minutes. The total annual burden for this data collection is 354 hours.

Annualized Table:

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
3rd Year Medical Students	850	1	25/60

Dated: March 3, 2005.

Betsey Dunaway,

Acting Reports Clearance Officer, Office of the Chief Science Officer, Centers for Disease Control and Prevention.

[FR Doc. 05–4684 Filed 3–9–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–05BK]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call (404) 371–5976 or send comments to Sandi Gambescia, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

National Survey of Ambulatory Surgery (OMB No. 0920–0334)—Reinstatement—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

The National Survey of Ambulatory Surgery (NSAS) was previously conducted by the CDC National Center for Health Statistics from 1994 through 1996. It is the principal source of data on ambulatory surgery center (ASC) services in the United States. It complements surgery data obtained in the NCHS National Hospital Discharge Survey (NHDS) OMB No. 0920–0212, which provides annual data concerning the nation's use of inpatient medical and surgical care provided in short-stay, non-Federal hospitals. The NSAS is a national probability sample survey of ambulatory surgery visits in hospitals and freestanding ambulatory surgery centers. It has been the benchmark against which special programmatic data sources are compared.

Data for the NSAS will be collected annually beginning in 2006 from a nationally representative sample of hospitals and freestanding ambulatory surgery centers. The hospital universe includes noninstitutional hospitals exclusive of Federal, military, and Department of Veterans Affairs hospitals located in the 50 States and the District of Columbia. The universe of freestanding facilities includes the freestanding ambulatory surgery centers licensed by states and/or certified as ambulatory surgery centers for Medicare reimbursement. As in the earlier survey, facilities specializing in dentistry, podiatry, abortion, family planning or birthing will be excluded. As with previous years, the data items which are abstracted from medical records are the basic core variables from the Uniform Hospital Discharge Data Set (UHDDS) as well as surgery times, total charges and information on anesthesia. There are no costs to respondents except for their time to participate in the survey.

Annualized Burden Table:

Respondents	Number of respondents	Number of responses/respondent	Avg. burden/response (in hrs.)	Total burden hours
Induction[1]	227	1	90/60	340.5
Out-of-scope verification	150	1	4/60	10
Sample Listing Sheet:				
ASC Personnel	224	12	30/60	1,344
Census Personnel	264	12	0	0
Medical Abstract:				
ASC Personnel	324	250	12/60	16,200
Census Personnel	164	250	2/60	1,367
Annual Update	488	1	5/60	41
Quality Control	245	20	2/60	163
Total				19,465.5

[1] The induction of 600 facilities takes place in the first year and 40 each in subsequent years but is averaged over 3 years.

Dated: March 1, 2005.

Betsey Dunaway,

Acting Reports Clearance Officer, Office of the Chief Science Officer, Centers for Disease Control and Prevention.

[FR Doc. 05–4687 Filed 3–9–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Information Collections Related to Reunification Procedures for Unaccompanied Alien Children.

OMB No.: New collection.

Description: Following the passage of the 2002 Homeland Security Act (Pub. L. 107–296), the Administration for Children and Families (ACF), Office of Refugee Resettlement (ORR), is charged with the care and placement of unaccompanied alien children in Federal custody, and implementing a policy for the release of these children, when appropriate, upon the request of suitable sponsors while awaiting immigration proceedings. In order for ORR to make determinations regarding the release of these children, the potential sponsors must meet certain conditions pursuant to section 462 of the Homeland Security Act and the *Flores* v. *Reno* Settlement Agreement No. CV85–4544–RJK (C.D. Cal. 1997). ORR considers the suitability of a sponsor based on the sponsor's ability and agreement to provide for the physical, mental and financial well-being of an unaccompanied minor and assurance to appear before immigration courts. To ensure the safety of the children, sponsors must undergo a background check. Suitable sponsors may be parents, close relatives, friends or entities concerned with the child's welfare. In this Notice, ACF announces that it proposes to employ the use of several information collections for recording: (1) The Sponsor's Agreement to Conditions of Release, which collects the sponsor's affirmation to the terms of the release; (2) the Verification of Release, which collects the children's affirmation to the terms of their release; (3) the Family Reunification Packet, which collects information related to the sponsor's ability to provide for the physical, mental and financial well-being of the child(ren) and (4) the Authorization for Release of Information, which collects information to be utilized for a background check.

Respondents: Potential sponsors of unaccompanied alien children and unaccompanied alien children in Federal custody.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Sponsor's Agreement	3,000	1	.166666	500
Verification of Release	3,000	1	.166666	500
Family Reunification Packet	3,000	20	.05	3,000
Authorization for Release of Information	3,000	12	.05	1,800

Estimated Total Annual Burden Hours: 5,800.

Additional Information: Copies of the proposed collections may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *grjohnsno@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after the publication of this document in the **Federal Register.** Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collections should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for ACF. E-mail address: *Katherine T. Astrich@omb.eop.gov.*

Dated: March 4, 2005.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 05–4692 Filed 3–9–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 2004M–0538, 2004M–0495, 2004M–0450, 2004M–0467, 2004M–0471, 2004M–0533, 2004M–0496, 2004M–0497]

Medical Devices; Availability of Safety and Effectiveness Summaries for Premarket Approval Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of premarket approval applications (PMAs) that have been approved. This list is intended to inform the public of the availability of safety and effectiveness summaries of approved PMAs through the Internet and the agency's Division of Dockets Management.

ADDRESSES: Submit written requests for copies of summaries of safety and effectiveness to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Please cite the appropriate docket number as listed in table 1 of this document when submitting a written request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the summaries of safety and effectiveness.

FOR FURTHER INFORMATION CONTACT: Thinh Nguyen, Center for Devices and Radiological Health (HFZ–402), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2186.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 30, 1998 (63 FR 4571), FDA published a final rule that revised 21 CFR 814.44(d) and 814.45(d) to discontinue individual publication of PMA approvals and denials in the **Federal Register**. Instead, the agency now posts this information on the Internet on FDA's home page at *http://www.fda.gov*. FDA believes that this procedure expedites public notification of these actions because

announcements can be placed on the Internet more quickly than they can be published in the **Federal Register**, and FDA believes that the Internet is accessible to more people than the **Federal Register**.

In accordance with section 515(d)(4) and (e)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(4) and (e)(2)), notification of an order approving, denying, or withdrawing approval of a PMA will continue to include a notice of opportunity to request review of the order under section 515(g) of the act. The 30-day period for requesting reconsideration of an FDA action under § 10.33(b) (21 CFR 10.33(b)) for notices announcing approval of a PMA begins on the day the notice is placed on the Internet. Section 10.33(b) provides that FDA may, for good cause, extend this-30 day period. Reconsideration of a denial or withdrawal of approval of a PMA may be sought only by the applicant; in these cases, the 30-day period will begin when the applicant is notified by FDA in writing of its decision.

The regulations provide that FDA publish a quarterly list of available safety and effectiveness summaries of PMA approvals and denials that were announced during that quarter. The following is a list of approved PMAs for which summaries of safety and effectiveness were placed on the Internet from October 1, 2004, through December 31, 2004. There were no denial actions during this period. The list provides the manufacturer's name, the product's generic name or the trade name, and the approval date.

TABLE 1.—LIST OF SAFETY AND EFFECTIVENESS SUMMARIES FOR APPROVED PMAS MADE AVAILABLE FROM OCTOBER 1, 2004, THROUGH DECEMBER 31, 2004

PMA No./Docket No.	Applicant	Trade Name	Approval Date
P020022/2004M–0538	Bayer Healthcare, LLC	BAYER VERSANT HCV RNA 3.0 ASSAY (bDNA)	March 28, 2003
P020021/2004M–0495	Wilson-Cook Medical, Inc./applicant at approval was Axcan Scandipharm, Inc.	WIZARD X-CELL PHOTODYNAMIC THERAPY BALLOON WITH FIBER OPTIC DIFFUSER	August 1, 2003
P040029/2004M–0450	Szabocsik & Associates	JSZ ORTHOKERATOLOGY (OPRIFOCON A) CONTACT LENSES FOR OVERNIGHT WEAR	September 29, 2004
P030032(S1)/2004M–0467	Genzyme Biosurgery	HYLAFORM PLUS (HYLAN B GEL)	October 13, 2004
P030011/2004M–0471	Syncardia Systems, Inc.	SYNCARDIA TEMPORARY CARDO WEST TOTAL ARTIFICAL HEART (TAH-t)	October 15, 2004
P040002/2004M–0533	Endologix, Inc.	ENDOLOGIX POWERLINK SYSTEM	October 29, 2004
P040022/2004M–0496	Medtronic, Inc./applicant at approval was AngioLink Corp.	EVS VASCULAR CLOSURE SYSTEM	November 3, 2004
P030031/2004M–0497	Biosense Webster, Inc.	BIOSENSE WEBSTER NAVISTAR/CELSIUS THERMOCOOL DIAGNOSTIC/ABLATION DEFLECTABLE TIP CATHETERS	November 5, 2004

II. Electronic Access

Persons with access to the Internet may obtain the documents at *http://www.fda.gov/cdrh/pmapage.html*.

Dated: March 2, 2005.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 05–4763 Filed 3–9–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005D–0069]

Guidance for Industry and Food and Drug Administration Staff; Class II Special Controls Guidance Document: Instrumentation for Clinical Multiplex Test Systems; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance document entitled ''Class II Special Controls Guidance Document: Instrumentation for Clinical Multiplex Test Systems.'' This guidance document describes a means by which instrumentation for clinical multiplex test systems may comply with the requirements of special controls for class II devices. It includes recommendations for validation of performance characteristics and recommendations for product labeling. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule to classify instrumentation for clinical multiplex test systems into class II (special controls). This guidance document is immediately in effect as the

special control for instrumentation for clinical multiplex test systems, but it remains subject to comment in accordance with the agency's good guidance practices (GGPs).

DATES: Submit written or electronic comments on this guidance at any time. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the guidance document entitled ''Class II Special Controls Guidance Document: Instrumentation for Clinical Multiplex Test Systems'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Courtney Harper, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1243, ext. 159.

SUPPLEMENTARY INFORMATION:

I. Background

Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule classifying instrumentation for clinical multiplex test systems into class II (special controls) under section 513(f)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c(f)(2)). This guidance document will serve as the special control for instrumentation for clinical multiplex test systems.

Section 513(f)(2) of the act provides that any person who submits a premarket notification under section 510(k) of the act (21 U.S.C. 360(k)) for a device that has not previously been classified may, within 30 days after receiving written notice classifying the device in class III under section 513(f)(1) of the act, request FDA to classify the device under the criteria set forth in section 513(a)(1) of the act. FDA shall, within 60 days of receiving such a request, classify the device by written order. This classification shall be the initial classification of the device. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the **Federal Register** announcing such classification. Because of the timeframes established by section 513(f)(2) of the act, FDA has determined, under § 10.115(g)(2) (21 CFR 10.115(g)(2)), that it is not feasible to allow for public participation before issuing this guidance as a final guidance document. Therefore, FDA is issuing this guidance document as a level 1 guidance document that is immediately in effect. FDA will consider any comments that are received in response to this notice to determine whether to amend the guidance document.

II. Significance of Guidance

This guidance is being issued consistent with FDA's GGPs regulation (§ 10.115). The guidance represents the agency's current thinking on instrumentation for clinical multiplex test systems. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

To receive ''Class II Special Controls Guidance Document: Instrumentation for Clinical Multiplex Test Systems'' by fax, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number (1546) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information, including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of cleared submissions, approved applications, and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

IV. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520) . The collections of information addressed in the guidance document have been approved by OMB in accordance with the PRA under the regulations governing premarket notification submissions (21 CFR part 807, subpart E, OMB control number 0910–0120). The labeling provisions addressed in the guidance have been approved by OMB under OMB control number 0910–0485.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 2, 2005.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 05–4759 Filed 3–9–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005D–0068]

Guidance for Industry and Food and Drug Administration Staff; Class II Special Controls Guidance Document: Drug Metabolizing Enzyme Genotyping System; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance document entitled ''Class II Special Controls Guidance Document: Drug Metabolizing Enzyme Genotyping System.'' This

guidance document describes a means by which drug metabolizing enzyme genotyping systems may comply with the requirements of special controls for class II devices. It includes recommendations for validation of performance characteristics and recommendations for product labeling. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule to classify drug metabolizing enzyme genotyping systems into class II (special controls). This guidance document is immediately in effect as the special control for drug metabolizing enzyme genotyping systems, but it remains subject to comment in accordance with the agency's good guidance practices (GGPs).

DATES: Submit written or electronic comments on this guidance at any time. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the guidance document entitled ''Class II Special Controls Guidance Document: Drug Metabolizing Enzyme Genotyping System'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Courtney Harper, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 240–276–0443, ext. 159.

SUPPLEMENTARY INFORMATION:

I. Background

Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule classifying drug metabolizing enzyme genotyping systems into class II (special controls) under section 513(f)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c(f)(2)). This guidance document will serve as the special control for drug metabolizing enzyme genotyping systems.

Section 513(f)(2) of the act provides that any person who submits a premarket notification under section 510(k) of the act (21 U.S.C. 360(k)) for a device that has not previously been classified may, within 30 days after receiving written notice classifying the device in class III under section 513(f)(1), request FDA to classify the device under the criteria set forth in section 513(a)(1). FDA shall, within 60 days of receiving such a request, classify the device by written order. This classification shall be the initial classification of the device. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the **Federal Register** announcing such classification. Because of the timeframes established by section 513(f)(2) of the act, FDA has determined, under § 10.115(g)(2) (21 CFR 10.115(g)(2)), that it is not feasible to allow for public participation before issuing this guidance as a final guidance document. Therefore, FDA is issuing this guidance document as a level 1 guidance document that is immediately in effect. FDA will consider any comments that are received in response to this notice to determine whether to amend the guidance document.

II. Significance of Guidance

This guidance is being issued consistent with FDA's GGPs regulation (§ 10.115). The guidance represents the agency's current thinking on drug metabolizing enzyme genotyping systems. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

To receive ''Class II Special Controls Guidance Document: Drug Metabolizing Enzyme Genotyping System'' by fax, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number (1551) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information, including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of cleared submissions, approved applications, and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

IV. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The collections of information addressed in the guidance document have been approved by OMB in accordance with the PRA under the regulations governing premarket notification submissions (21 CFR part 807, subpart E, OMB control number 0910–0120). The labeling provisions addressed in the guidance have been approved by OMB under OMB control number 0910–0485.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 2, 2005.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 05–4761 Filed 3–9–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005D–0019]

Draft Guidance for Industry and Food and Drug Administration Staff on Class II Special Controls Guidance Document: Automated Blood Cell Separator Device Operating by Centrifugal or Filtration Separation Principle; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft document entitled ''Class II Special Controls Guidance Document: Automated Blood Cell Separator Device Operating by Centrifugal or Filtration Separation Principle'' dated January 2005. The draft guidance document serves as the special control to support the reclassification from class III to class II of the automated blood cell separator device operating on a centrifugal or filtration separation principle intended for the routine collection of blood and blood components. This draft guidance document describes a means by which the automated blood cell separator device operating by centrifugal or filtration separation principle may comply with the requirement of special controls for class II devices. Elsewhere in this issue of the **Federal Register**, FDA is publishing a proposed rule to reclassify these device types into class II (special controls).

DATES: Submit written or electronic comments on the draft guidance by June 8, 2005 to ensure their adequate consideration in preparation of the final guidance. General comments on agency guidance documents are welcome at any time. Submit written comments on the information collection burden by May 9, 2005.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The draft guidance may also be obtained by mail by calling the Center for Biologics Evaluation and Research Voice Information System at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Kathleen E. Swisher, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, suite 200N, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft document entitled ''Class II Special Controls Guidance Document: Automated Blood Cell Separator Device Operating by Centrifugal or Filtration Separation Principle'' dated January 2005. This special control guidance identifies the relevant classification regulation, which provides a description of the applicable automated blood cell separator. In addition, other sections of this special control guidance list the risks to health identified by FDA and describe measures that, if followed by manufacturers and combined with general controls, will ordinarily address the risks associated with these automated blood cell separators.

The draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations.

II. Comments

The draft guidance document is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the draft guidance. Submit written or electronic comments to ensure adequate consideration in preparation of the final guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. A copy of the draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. The Paperwork Reduction Act of 1995

The draft guidance document contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). Under the PRA, Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on the following topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Draft Guidance for Industry—Class II Special Controls Guidance Document: Automated Blood Cell Separator Device Operating by Centrifugal or Filtration Separation Principle

Under the Safe Medical Devices Act of 1990 (Public Law 101–629, 104 Stat. 4511), FDA may establish special controls, including performance standards, postmarket surveillance, patient registries, guidelines, and other appropriate actions it believes necessary to provide reasonable assurance of the

safety and effectiveness of the device. This draft guidance document serves as the special control to support the reclassification from class III to class II of the automated blood cell separator device operating on a centrifugal separation principle intended for the routine collection of blood and blood components; and, serves as the special control for the filtration-based device with the same intended use reclassified as class II in the **Federal Register** of February 28, 2003 (68 FR 9530).

For currently marketed products not approved under the premarket approval (PMA) process, the manufacturer should file with FDA for 3 consecutive years an annual report on the anniversary date of the device reclassification from Class III to Class II or, on the anniversary date of the 510(k) clearance. Any subsequent change to the device requiring the submission of a premarket notification in accordance with section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360) should be included in the annual report. Also, a manufacturer of a device determined to be substantially equivalent to the centrifugal or filtration-based automated blood cell separator device intended for the routine collection of blood and blood components, should comply with the same general and special controls.

The annual report should include, at a minimum, a summary of anticipated and unanticipated donor adverse device events that have occurred, such as those required under (§ 606.160(b)(1)(iii) 21 CFR 606.160(b)(1)(iii))[1] to be recorded and maintained by the facility using the device to collect blood and blood components, and that might not be reported by manufacturers under Medical Device Reporting (MDR). Also, equipment failures, including software, hardware, and disposable item failures' should be reported. The reporting of adverse device events summarized in an annual report will alert FDA to trends or clusters of events that might be a safety issue otherwise unreported under the MDR regulation.

Reclassification of this device from class III to class II for the intended use of routine collection of blood and blood components will relieve manufacturers of the burden of complying with the premarket approval requirements of section 515 of the act (21 U.S.C. 360e), and may permit small potential competitors to enter the marketplace by reducing the burden. Although the special control guidance document recommends that manufacturers of these devices file with FDA an annual report for three consecutive years, this would be less burdensome than the current postapproval requirements under part 814, subpart E (21 CFR part 814, subpart E), including the submission of periodic reports under § 814.84.

Collecting or transfusing facilities, and manufacturers have certain responsibilities under the CFR. Among others, collecting or transfusing facilities are required to maintain records of any reports of complaints of adverse reactions (§ 606.170), while the manufacturer is responsible for conducting an investigation of each event that is reasonably known to the manufacturer and evaluating the cause of the event § 803.50(b)(2) (21 CFR 803.50(b)(2)). In the draft guidance document, we recommend that manufacturers include in their three annual reports a summary of adverse reactions maintained by the collecting or transfusing facility or similar reports of adverse events collected in addition to those required under the MDR regulation.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

	Number of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Annual Report	4	1	4	5	20

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on FDA records, there are approximately four manufacturers of automated blood cell separator devices. We estimate that the manufacturers will spend approximately 5 hours preparing and submitting the annual report. The total annual burden of this collection of information is estimated at approximately 20 hours.

Other burden hours required for proposed 21 CFR 864.9245 are already reported and approved under OMB control number 0910–0120 (premarket notification submission 510(k), 21 CFR part 807, subpart E), and OMB control number 0910–0437 (MDR). Currently, manufacturers of medical devices are required to submit to FDA individual adverse event reports of death, serious injury, and malfunctions (§§ 803.50 and 803.53). The manufacturer is responsible for conducting an investigation of each event and evaluating the cause of the event (§ 803.50(b)(2)).

The reporting recommended in the special control guidance document broadens the information to be reported by manufacturers to FDA. Although the manufacturer's reporting burden is increased, the collection burden remains unchanged. We are recommending that the manufacturer submit annually, for 3 consecutive years, a summary of all adverse events, including those reported under part 803. The Mandatory MedWatch Reporting Form 3500A: Codes Manual, contains a comprehensive list of adverse events associated with device use, including most of those events that we recommend summarizing in the annual report.

IV. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/cber/guidelines.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: March 1, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–4764 Filed 3–9–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: February 2005

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of February 2005, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusions is

[1] 21 CFR 606.160(b) ''Records shall be maintained that include, but are not limited to, the following when applicable: * * * (1)(iii) Donor adverse reaction complaints and reports, inlcuding results of all investigations and followup.''

imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, *e.g.*, a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject name, address	Effective date
PROGRAM-RELATED CONVICTIONS	
ABERNATHY, EVELYN HERTFORD, NC	3/20/2005
ADKINS, JO ANN FRESNO, CA	3/20/2005
AYRAPETYAN, TIGRAN TAFT, CA	3/20/2005
BAKER, CHARLES DURHAM, NC	3/20/2005
BAKER, JON SCOTTSDALE, AZ	12/30/2004
BARAM, GREGORY STUDIO CITY, CA	3/20/2005
BURGER, BARBARA MARYLAND HEIGHTS, MO	3/20/2005
CAPERS, KIZZY NEWTON GROVE, NC	3/20/2005
COOKE, LENOTRA LOS ANGELES, CA	3/20/2005
CRUZ, JULIA SANTA ROSA, CA	3/20/2005
CUNNINGHAM, DEATRYCE SAN PABLO, CA	3/20/2005
DEO, VASU TERMINAL ISLANDS, CA	3/20/2005
DIPRIMA, FRANK DILLSBURG, PA	3/20/2005
GARCIA, GUSTAVO SONOMA, CA	3/20/2005
GERDES, DEBRA NORTH PEKIN, IL	3/20/2005
GORE, ANGELA NEW ORLEANS, LA	3/20/2005
GUERRERO, GAUDENCIO SONOMA, CA	3/20/2005
HAMBRIC, EVERETTE MORGANTOWN, WV	3/20/2005
HENSLEY, TIMOTHY KNOXVILLE, TN	3/20/2005
HERNANDEZ, BENITA LOS ANGELES, CA	3/20/2005
HINTON, PAULA SHREVEPORT, LA	3/20/2005
HUTCHINSON, TRENT SAN FRANCISCO, CA	3/20/2005
JOHN, NICOLE LONG ISLAND CITY, NY	3/20/2005
JOHNSON, GADSON LOS ANGELES, CA	3/20/2005
JONES, SILVER DURHAM, NC	3/20/2005
KAMRAVA, SID ENCINO, CA	3/20/2005
KASSABIAN, EMANUEL ANAHEIM, CA	3/20/2005
KEEN, KEITH WILMINGTON, NC	3/20/2005
KETENDJIAN, AIKAZ SACRAMENTO, CA	3/20/2005
LANGLEY, KAREN FOUR OAKS, NC	3/20/2005
MAJCHEN, ELENA FRESNO, CA	3/20/2005
MALVEAUX, ANNA FT WORTH, TX	3/20/2005
MARTINEZ, ELIZABETH DENVER, CO	3/20/2005
MAZOR, ANDREW GRANADA HILLS, CA	3/20/2005
MCBRIDE, HEIDI HEYBURN, ID	3/20/2005
MCCOY, JIMMY FRESNO, CA	3/20/2005
MOODY, CHERRY COLEMAN, FL	3/20/2005
MUNN, VINCENT LOMPOC, CA	3/20/2005
MUSOYAN, SARKIS BURBANK, CA	3/20/2005
NAVARRO, PATRICIA CYPRUS, CA	3/20/2005
OGANESYAN, VARDAN LONG BEACH, CA	3/20/2005
PAL, MOHAMMAD ASTORIA, NY	3/20/2005
PARSON, DIANNE MORVEN, NC	3/20/2005
RODRIGUEZ, RICARDO DOWNEY, CA	3/20/2005
RUPA, LUZ DOWNEY, CA	3/20/2005
SANDOVAL, JOSE DOWNEY, CA	3/20/2005
SCHLUTER, TERRY ST PETERSBURG, FL	3/20/2005
SCHWARZ, MICHAEL MARICOPA, AZ	3/20/2005
SEPUT, EDGARDO LA MIRADA, CA	3/20/2005
SILVESTRE-MEJIA, LUIS JACKSON HEIGHTS, NY	3/20/2005
SMITH, VICKY COLUMBUS, OH	3/20/2005
SONCO, FREDDY DOWNEY, CA	3/20/2005
STEELE, SAMUEL LAS VEGAS, NV	3/20/2005
TUREK, RAYMOND ATLANTA, GA	3/20/2005
URIN, ALEXANDER LOS ANGELES, CA	3/20/2005
VILLALVA, VALFRED SONOMA, CA	3/20/2005
VILLAMOR, MANUEL MIAMI, FL	3/20/2005
WATTS, JO ANN TALLAHASSEE, FL	3/20/2005
WILDIN, HEATHER GREAT FALLS, MT	3/20/2005
WILLIAMS, DEWAYNE SEATTLE, WA	3/20/2005
FELONY CONVICTION FOR HEALTH CARE FRAUD	
BAY, DAVID SPRINGFIELD, MO	3/20/2005
FAGIN, KEVIN BEREA, KY	3/20/2005
FINK, DAVID METUCHEN, NJ	3/20/2005
HOOKS, PETRINA DELAND, FL	3/20/2005
MAYES, JOSEPH NORTH EAST, PA	3/20/2005
MURRAY, TOMMIE STONEWALL, MS	3/20/2005
NEWSTADT, RAYMOND MONTGOMERY, PA	3/20/2005
NGUYEN, DAVID CLOVIS, CA	3/20/2005
PAULEY, SUSAN HAMPTON, VA	3/20/2005
PELAEZ, JORGE ROSEMEAD, CA	3/20/2005
ROBINSON, JENNIFER JACKSON, MS	3/20/2005
ROSENFARB, ANDREW WESTFIELD, NJ	3/20/2005
SERRANO, VERONICA CHULA VISTA, CA	3/20/2005
TRIVETT, ELISA DUNEDIN, FL	3/20/2005
ZEIGLER, TAMARA CORONA, CA	3/20/2005
FELONY CONTROL SUBSTANCE CONVICTION	
BENTZ, WILLIAM NEOSHO, MO	3/20/2005
BOUCHARD, TAMARA MENTOR, OH	3/20/2005
CAMPBELL, FRANCES BROKEN ARROW, OK	3/20/2005
CAMPOSTRINI, KATHERINE OROVILLE, CA	3/20/2005
DEDRICK, TAMMY CORONA, CA	3/20/2005
FAHTI, CATHERINE COMPTON, CA	3/20/2005
FERRO, PAULA PHILADELPHIA, PA	3/20/2005
HAKANSON, MARK ARCADIA, CA	3/20/2005
HELMETZ, PAMELA EUCLID, OH	3/20/2005
HUMPHRIES, CAROLYN DAWSON, TX	3/20/2005
KAPLAN-CALLAHAN, ROBYN WHITMAN, MA	3/20/2005
KELLEY, SHERMA EAST PRAIRIE, MO	3/20/2005
MCKININ, MICHAEL CHICO, CA	3/20/2005
SEGURA, IVAN WASECA, MN	3/20/2005
SMITH, MICHAEL ORLANDO, FL	3/20/2005
STUTZMAN, LAURIE	3/20/2005

Subject name, address	Effective date
CHINO HILLS, CA	
PATIENT ABUSE/NEGLECT CONVICTIONS	
ATKINS, JAY ..... MARANA, AZ	3/20/2005
CARROLL, STEVE ..... WASHINGTON, UT	3/20/2005
CELEDIO, CARLO ..... DALY CITY, CA	3/20/2005
COE, MARLO ..... BELLINGHAM, WA	3/20/2005
DAVIS, KATRICE ..... ST MARTINVILLE, LA	3/20/2005
DECKER, SHAWN ..... MUSKOGEE, OK	3/20/2005
GINTHER, DEANNA ..... DENVER, CO	3/20/2005
GUY, JUDITH ..... LUTHER, OK	3/20/2005
HOWARD, CHARLES ..... SPRINGFIELD, KY	3/20/2005
JACKSON, CLIFFORD ..... LOS ANGELES, CA	3/20/2005
MARJANOVIC, TANYA ..... BEAVERTON, OR	3/20/2005
PATTON, BRANDY ..... SUSANVILLE, CA	3/20/2005
PINKSTON, AMANDA ..... TULSA, OK	3/20/2005
REICH, LAURENCE ..... BEVERLY HILLS, CA	3/20/2005
RISER, JARED ..... ROOSEVELT, UT	3/20/2005
SNOW-WORKMAN, JOY ..... MCMINNVILLE, OR	3/20/2005
THOMPSON, LYNN ..... BUFFALO, NY	3/20/2005
USATE, HENRY ..... SAN JOSE, CA	3/20/2005
WILL, NANCY ..... POTEAU, OK	3/20/2005
CONVICTION FOR HEALTH CARE FRAUD	
KILMER, GERALDINE ..... SILVER GROVE, KY	3/20/2005
LEWIS, KARMON ..... GULFPORT, MS	3/20/2005
PAYNE, CRYSTAL ..... CLEVELAND, MS	3/20/2005
LICENSE REVOCATION/SUSPENSION/ SURRENDERED	
ADAMS, JULIA ..... CHICAGO, IL	3/20/2005
AHLUWALIA, JASBIR ..... RENTON, WA	3/20/2005
ALBERTS, WAYNE ..... VIENNA, VA	3/20/2005
AMEND, CATHY ..... LATONIA, KY	3/20/2005
ANDERSON, ANGELINA ..... DALY CITY, CA	3/20/2005
ANDERSON, C ..... DENVER, CO	3/20/2005
ANDERSON, DEBORAH ..... ALBANY, OR	3/20/2005
ANDERSON, NANCY ..... NASHVILLE, TN	3/20/2005
ATWELL, DEBRA ..... RENO, NV	3/20/2005
BALDWIN, GRANT ..... FRESNO, CA	3/20/2005
BAUGHMAN, PAMELA ..... HUNKER, PA	3/20/2005
BAZE, ANGELA ..... NORMAN, OK	3/20/2005
BECK, DENNIS ..... SPENCER, IA	3/20/2005
BENNETT, LINDA ..... SMYRNA, TN	3/20/2005
BERETTA, TIFFANY ..... MONTROSE, CO	3/20/2005
BERMAN, BRUCE ..... FARMINGDALE, NY	3/20/2005
BITTINGER, CATHI JO ..... SNOW SHOE, PA	3/20/2005
BODENCAK, JANET ..... HEDGESVILLE, WV	3/20/2005
BOSWEIN, DANIEL ..... YOUNGTOWN, AZ	3/20/2005
BOWERS, HEATHER ..... ST PETERSBURG, FL	3/20/2005
BRAY, KIRSTEN ..... ALEXANDRIA, VA	3/20/2005
BROOM, KAREN ..... UNIVERSAL CITY, TX	3/20/2005
BUJOR, TITUS ..... PARADISE, CA	3/20/2005
CABRERA, DEBORAH ..... VIRGINIA BEACH, VA	3/20/2005
CETINA, TANYA ..... WARREN, OH	3/20/2005
COLBERT, BEVERLY ..... IRVING, TX	3/20/2005
COLEMAN, ARLIE ..... MEMPHIS, TN	3/20/2005
CONKWRIGHT, DEBORAH ..... SALVISA, KY	3/20/2005
CONNER, SUSAN ..... DALLAS, NC	3/20/2005
COOK, LORIE ..... MIDWEST CITY, OK	3/20/2005
COTTON, KIMBERLY ..... WILSON, NC	3/20/2005
CROCKETT, CARA ..... PRAIRIE VILLAGE, KS	3/20/2005
DAVIS, BETTY ..... SEMMES, AL	3/20/2005
DEMESI, MOWOE ..... GRAND PRAIRIE, TX	3/20/2005
DENEAU, JENIFER ..... MONTROSE, CO	3/20/2005
DESJARDIN, PAUL ..... QUINCY, MA	3/20/2005
DICKERSON, JAMES ..... LISLE, IL	3/20/2005
DIEL, RANDALL ..... TUCSON, AZ	3/20/2005
DIGREGORIO, EDWARD ..... WARWICK, RI	3/20/2005
DIWA, JONATHAN ..... UPLAND, CA	3/20/2005
DOOLEY, HEIDI ..... PHOENIX, AZ	3/20/2005
EVERMAN, SHERRIL ..... INDIANAPOLIS, IN	3/20/2005
FARRAR, TERESA ..... SANTA PAULA, CA	3/20/2005
FRANK, CHERYL ..... SONORA, CA	3/20/2005
GATES, KARLA ..... TULSA, OK	3/20/2005
GAUNTT, RICKY ..... FT STOCKTON, TX	3/20/2005
GORMUS, JOSEPH ..... RICHMOND, VA	3/20/2005
HAAG, JAMES ..... SUFFIELD, CT	3/20/2005
HAMILTON, BRIDGETT ..... SEATTLE, WA	3/20/2005
HARRIS, BARBARA ..... LELAND, NC	3/20/2005
HASTINGS, MARY ..... COLORADO SPRINGS, CO	3/20/2005
HEDGIS, NICK ..... MENLO, GA	3/20/2005
HERSEY, THEA ..... NORTON, VA	3/20/2005
HOYT, NANCY ..... SUN VALLEY, CA	3/20/2005
ISAACS, BARBARA ..... MARICOPA, AZ	3/20/2005
JARAMILLO, RODNEY ..... SAN LEANDRO, CA	3/20/2005
JONES, BRENDA ..... TULSA, OK	3/20/2005
JORDAN, JENNIE ..... HUNTSVILLE, AL	3/20/2005
JUNE, VIRGINIA ..... SALT LAKE CITY, UT	3/20/2005
KAUFFMAN, DINAH ..... FAYETTEVILLE, PA	3/20/2005
KERSHAW, SHARON ..... LEXINGTON, KY	3/20/2005
KNECHT, LINDA ..... MT POCONO, PA	3/20/2005
KORMI, TOURAJ ..... EL SOBRANTE, CA	3/20/2005
LAKE, ROBERT ..... MURRAY, UT	3/20/2005
LARRIVEE, MICHELLE ..... VERO BEACH, FL	3/20/2005
LEBEL, LANA ..... PUEBLO WEST, CO	3/20/2005
LESLIE, ROBERT ..... IRVINE, CA	3/20/2005
LETTINGTON, ALEXIS ..... PALM SPRINGS, CA	3/20/2005
LOPEZ, BRANDICE ..... CARMICHAEL, CA	3/20/2005
MANZANO, GREGORIO ..... DALY CITY, CA	3/20/2005
MARQUEZ, CARLOS ..... ORANGE, CA	3/20/2005
MAYS, KRISTAL ..... BRADENTON, FL	3/20/2005
MCCLURE, DEBRA ..... QUINCY, CA	3/20/2005
MILLS, STEPHEN ..... TISBURY, MA	3/20/2005
MORENO, LINDA ..... GREAT FALLS, MT	3/20/2005
NEECE, STEPHEN ..... PLANO, TX	3/20/2005
NWOSU, JUDE ..... TEMPE, AZ	3/20/2005
O'MALLEY, MAURA ..... WESTFFIELD, MA	3/20/2005
PALLADINO, ARTHUR ..... AMHERST, MA	3/20/2005
PARKER, RAMONA ..... JONESBORO, AR	3/20/2005
PARKER, SCOTT ..... MEAD, OK	3/20/2005
PEARSON, REGINA ..... PADUCAH, KY	3/20/2005
PERNER, TENA ..... CASTALIAN SPRINGS, TN	3/20/2005
PETTIES, TYREE	3/20/2005

Subject name, address	Effective date
CHICAGO, IL	
PISANO, SALLIE LACEY, WA	3/20/2005
POOLE, WILLIAM EAGLESVILLE, TN	3/20/2005
POULSEN, JERRY W VALLEY CITY, UT	3/20/2005
POYATOS, DANILO VICTORVILLE, CA	3/20/2005
PRONTO, DAVID HUDSON FALLS, NY	3/20/2005
PRUGH, JAMES SCOTTSDALE, AZ	3/20/2005
RAIMAN, GARII CONCORD, CA	3/20/2005
ROSS, LINDA EL DORADO, KS	3/20/2005
SABATINO, DAVID ELIZABETHTON, TN	3/20/2005
SARVIS, AMANDA FREMONT, NC	3/20/2005
SAVAGE, SANDRA S BOSTON, MA	3/20/2005
SAYED, SAQUIB CRANFORD, NJ	3/20/2005
SCHAEFFER, BRANDON CHICAGO, IL	3/20/2005
SCHWARZ, ANN RANDOLPH, MA	3/20/2005
SCOTT, OTIS ABINGTON, PA	3/20/2005
SEJALBO, MARYANN HAYWARD, CA	3/20/2005
SHELL, JOAN-MARIE PORT HADLOCK, WA	3/20/2005
SHERMAN, AHRON EUREKA, CA	3/20/2005
SHINDORE, SHREELAL NAPLES, FL	3/20/2005
SHORT, LEA ANN NEW ALBANY, IN	3/20/2005
SILVA, LINDA IONE, CA	3/20/2005
SIMPSON, LISA LOUISVILLE, KY	3/20/2005
SMITH, LESLIE TEMPE, AZ	3/20/2005
SMITH, SUSAN ROCKFORD, IL	3/20/2005
SMITH, TRICIA OSSIPEE, NH	3/20/2005
SOUSA, BONNIE STOCKTON, CA	3/20/2005
STAPLETON, KELLY CRESTWOOD, IL	3/20/2005
STELLHORN, JEANNE CAHOKIA, IL	3/20/2005
STEVENS, ANNA ROOSEVELT, UT	3/20/2005
STOLLOF, KELLY INDIO, CA	3/20/2005
STROMBERG, WILLIAM DE SOTO, IL	3/20/2005
SUPPLEE, PENNY WEST CHESTER, PA	3/20/2005
SUSS, BEVERLY GRAFTON, MA	3/20/2005
SUTTON, CURTIS LAYTON, UT	3/20/2005
TAYLOR, REGINA CHICAGO, IL	3/20/2005
TEE, MIKE AURORA, CO	3/20/2005
VAHLE, TREVOR FRUITA, CO	3/20/2005
VALENCIA, MARIA DENVER, CO	3/20/2005
VALENTINE, CHRISTINE RICHMOND, VA	3/20/2005
VANDENBOS, GREGORY RENO, NV	3/20/2005
VAWTER, KAREN COEUR D'ALENE, ID	3/20/2005
WALLACE, PATRICK ABINGDON, VA	3/20/2005
WIJNHAMER, JAN BELLINGHAM, WA	3/20/2005
WILLIAMS, MICHELLE PAINTSVILLE, KY	3/20/2005
WILSON, DONNA JASPER, TX	3/20/2005
WRIGHT, STEVIE SEYMOUR, TN	3/20/2005
YOUNG, SANDRA CARTERVILLE, IL	3/20/2005
ZEGARRA, GLORIA GLENDALE, CA	3/20/2005
FRAUD/KICKBACKS/PROHIBITED ACTS/ SETTLEMENT AGREEMENTS	
MED-CON, INC PAINTSVILLE, KY	12/29/2004
PRICE, HARRY MARTINSBURG, VA	9/20/2004
SHAW, JOHN PAINTSVILLE, KY	12/29/2004
OWNED/CONTROLLED BY CONVICTED ENTITIES	
AMERICAN FAMILY PHARMACEUTICALS, INC NAPLES, FL	3/20/2005
CONVENIENT MEDICAL SERVICES, INC NAPLES, FL	3/20/2005
LADD MANAGEMENT CORPORATION LEAWOOD, KS	3/20/2005
MARIN CHIROPRACTIC, INC VAN NUYS, CA	3/20/2005
MICHAEL E SMITH, D P M, P A ORLANDO, FL	3/20/2005
MOBILE DENTISTRY, LLC NEW CASTLE, PA	3/20/2005
PAIN RELIEF MEDICAL CENTER VAN NUYS, CA	3/20/2005
S FT MYERS MEDICAL CENTER, INC FT MYERS, FL	3/20/2005
SHREELAL M SHINDORE, MD, PA NAPLES, FL	3/20/2005
SYNERGISTICS MEDICAL CARE PA LEAWOOD, KS	3/20/2005
DEFAULT ON HEAL LOAN	
BAKER, WALTER VALLEJO, CA	3/20/2005
BARNETT, RUTH DETROIT, MI	2/1/2005
BELL, HERMAN LOS ANGELES, CA	3/20/2005
CHIANG, PHILIP MOUNTAIN VIEW, CA	3/20/2005
FERNANDO, ANTONIO PHILADELPHIA, PA	3/20/2005
LINDLY, MAURICE SALINAS, CA	3/20/2005
MULLINAX, JEFFREY WINDSOR, CA	3/20/2005
NEWBY, EDGAR LAWTON, OK	3/20/2005
PASCALE, MICHELE AUGUSTA, GA	3/20/2005
RAPPA, RICHARD N HAVEN, CT	3/20/2005
CMP	
O'CONNOR, THOMAS MILWAUKEE, WI	2/28/2005

Dated: March 2, 2005.

Katherine B. Petrowski,

Director, Exclusions Staff, Office of Inspector General.

[FR Doc. 05–4680 Filed 3–9–05; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Assessment of the Use of Special Funding on Research on Type 1 Diabetes Provided by the Balanced Budget Act of 1997, the FY 2001 Consolidated Appropriations Act, and the Public Health Service Act Amendment for Diabetes

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), the National Institutes of Health (NIH), will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: *Title:* Assessment of the Use of Special Funding for Research on Type 1 Diabetes Provided by the Balanced Budget Act of 1997 (Pub. L. 105–33), the FY 2001 Consolidated Appropriations Act (Pub. L. 106–554), and the Public Health Service Act Amendment for Diabetes (Pub. L. 107–360). *Type of Information Collection Request:* Revision, OMB control number 0925–0503; expiration date: 06/30/2005. *Need and Use of Information Collection:* This

survey will be one source of input into a statutorily mandated assessment and report to the Congress on special funding for research on type 1 diabetes provided by the Balanced Budget Act of 1997, (Pub. L. 105–33), the FY 2001 Consolidated Appropriations Act, (Pub. L. 106–554), and the Public Health Service Act Amendment for Diabetes, (Pub. L. 107–360). Collectively, these Acts provided $1.14 billion in special funds to the Department of Health and Human Services (HHS) for research aimed at understanding, treating and preventing type 1 diabetes and its complications. The Secretary of HHS subsequently designated to NIDDK the lead responsibility in the Department for developing a process for allocation of these funds. The primary objective of the survey is to gain information, via a brief questionnaire, from NIH research grantees, who were the primary recipients of these special funds, concerning their views on the impact of the type 1 diabetes research funding with respect to: (1) Advancing scientific accomplishments involving innovative, clinically relevant, and multidisciplinary research on type 1 diabetes; (2) developing resources or reagents useful for type 1 diabetes research; and (3) increasing the number and quality of type 1 diabetes investigators. The responses will provide valuable information concerning how the funds have facilitated research as intended by these Acts of Congress. The results will also help determine how research progress from these special congressional initiatives fits within the continuum of diabetes research, and how these funds have contributed to the field of type 1 diabetes research and NIH efforts to combat this challenging health problem. Information from this study will aid in evaluation of the process by which the research goals for use of the special type 1 diabetes funds have been developed and are being pursued. Responses already collected from this survey were analyzed as part of an interim program assessment that was published by the NIDDK in April, 2003 *http://www.niddk.nih.gov/federal/planning/type 1_specialfund/.* This revised survey will contribute to a statutorily mandated report, due to Congress on January 1, 2007, evaluating the process and efforts under this program and assessing research initiatives funded by these Acts of Congress.

Frequency of Response: The initial survey will require a one time response; though, respondents may be contacted again in the event of future congressionally mandated reports on the use of the special type 1 diabetes research funds.

Affected Public: Research scientists who received the special funds about which Congress has mandated in law the requirements for an evaluation report. *Type of Respondents:* Laboratory and clinical investigators who have received support from the special type 1 diabetes funds provided under the laws previously cited. The annual reporting burden is as follows: *Estimated Number of Respondents:* 500; *Estimated Number of Responses per Respondent:* 1 (Respondents will be given one questionnaire containing an estimated fifteen questions.); *Average Burden Hours Per Response:* 1; and *Estimated Total Annual Burden Hours Requested:* 500. The annualized total cost to respondents is estimated at: $25,000. It is expected that the respondents will be contacted vie e-mail and that their responses will be collected through an Internet-accessible questionnaire. These measures will reduce the burden on the respondents and the overall costs of administering the study. Because different types of awards have been made with the special type 1 diabetes funds, the questionnaire may be tailored such that respondents will only be asked to answer a subset of questions that pertain to their particular type of award(s). No respondent will be asked to answer more than a total of fifteen questions, at least one-third of which will be answered with a ''yes'' or ''no'' or a one-word response. There are no Capital Costs, Operating or Maintenance Costs to report.

Request For Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Shefa Gordon, Office of Scientific Program and Policy Analysis, NIDDK, NIH, Building 31, Room 9A31, 9000 Rockville Pike, Bethesda, MD 20892, or call non-toll-free number 301–496–6623 or e-mail your request, including your address to: *gordonshefa@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: March 2, 2005.

Lynell Nelson,

Project Clearance Liaison, NIDDK, National Institutes of Health.

[FR Doc. 05–4674 Filed 3–9–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: (301) 496–7057; fax: (301) 402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Dimer Inhibitory Peptides of CXCR4 as a Possible Novel Therapy for Cancer

Jinhai Wang and Michael Norcross (FDA),
DHHS Reference No. E–037–2005/0—Research Tool,
Licensing Contact: John Stansberry; (301) 435–5236; *stansbej@mail.nih.gov.*

This invention may control or inhibit cancer metastases by targeting

chemokine receptor dimer formation. Specifically, this invention relates to a synthetic peptide of the transmembrane region 4 (TM4) of the Chemokine receptor (CXCR4). TM4 inhibits CXCR4 dimerization and tumor cell migration. CXCR4 is highly expressed in human breast cancer cells, prostate cancer, and pancreatic cancer. CXCR4 is involved in breast cancer metastasis and tumor migration. Immunotherapies or vaccinations based on blocking chemokine receptor dimerization with TM4 could be a useful treatment against proliferative diseases and cancer.

Carbohydrate-Encapsulated Gold Nanoparticles as Novel Anti-metastatic Agents

Drs. Joseph Barchi (NCI), Sergei Svarovsky (NCI) *et al.,*
DHHS Reference No. E–001–2005/0–PCT–01,
Licensing Contact: John Stansberry; (301) 435–5236; *stansbej@mail.nih.gov.*

The invention relates to the development of a new synthesis for the tumor-associated, cell-surface carbohydrate moiety, known as the Thomsen-Friedenrich T antigen. The inventors prepared a novel, multivalent presentation platform by linking this disaccharide antigen to the surface of gold nanoparticles and describe the application of the multivalent system as an anti-adhesive tool to inhibit metastasis. The glyconanoparticles principle described here has the potential to integrate all the current knowledge and applications on processes that involve carbohydrate molecules (inflammation, viral, bacterial, and toxin infection, etc.). Administration of these nanoparticles into mice bearing breast tumors was shown to inhibit lung metastases in this model. This technology establishes the ''proof of principle'' for possible biological applications of glyconanoparticles.

In addition to licensing, the technology is available for further development through collaborative research with the inventors via a Cooperative Research and Development Agreement (CRADA).

Methods for the Selection of Subjects for Multiple Sclerosis Therapy

Roland Martin *et al.* (NINDS),
International Application No. PCT/US04/10584 filed 05 Apr 2004 (DHHS Reference No. E–005–2004/0–PCT–01),
Licensing Contact: Thomas Clouse; (301) 435–4076; *clousetp@mail.nih.gov.*

Multiple Sclerosis (MS) is a life-long chronic autoimmune disease diagnosed primarily in young adults who have a virtually normal life expectancy. Estimates place the annual costs of MS in the United States in excess of $2.5 billion. There are approximately 250,000 to 400,000 persons in the United States with MS, and approximately 2.5 million persons worldwide suffer from MS. A variety of therapies are used to treat MS, but there is no single therapy that can be used to treat all patients. Furthermore, therapies that are currently approved for MS are only moderately effective, and in some patients they have no effect at all. The invention provides a method to determine if a patient with MS will respond to a therapeutic protocol by analyzing the expression of genes expressed by the immune system. For example, a single gene can be assessed, or an expression profile of a patient can be created using an array comprising gene sequences and analyzed to determine if the patient will respond to one or more therapeutic protocols. A cDNA probe constructed from mRNA of lymphocytes isolated from a patient can hybridize with a microarray, and the extent of hybridization of the probes to each gene on the microarray can be determined. The microarray can include nucleic acid sequences encoding, for example, IL–8, Bcl–2–interacting protein, dihydrofolate reductase, gyanylate-binding protein 1, interferon-induced 17 kDa protein, 2′5′ OAS, plakoglobin, interferon inducible proteinkinase, and STAT–1, among others.

Methods for Identifying, Diagnosing, and Predicting Survival of Lymphomas

Louis M. Staudt *et al.* (NCI),
PCT Application No. PCT/US2004/029041 filed 03 Sep 2004 (DHHS Reference No. E–234–2003/1–PCT–01) and U.S. Non-Provisional Patent Application 10/934,930 filed on 03 Sep 2004 (DHHS Reference No. E–108–2004/0–US–01),
Licensing Contact: Jeff Walenta; (301) 435–4633; *walentaj@mail.nih.gov.*

Human lymphomas and leukemias are a diverse set of cancers. Many of these cancers, while expressing a similar phenotype between different individuals, have a diverse underlying genetic basis for the disease. This diverse genetic basis has implications on the effective treatment of the various phenotypes of lymphoma. For example, a drug that was effective against one individual's phenotype of lymphoma will not be effective against a similar lymphoma in another individual. An invention that helps clinicians classify a lymphoproliferative disorder would provide the basis for a ''pharmacogenomic'' method for treating such cancers.

The present invention discloses a novel microarray for obtaining gene expression profile data to be used in identifying lymphoma types and predicting survival in a lymphoma patient. The present invention further discloses a variety of methods for analyzing gene expression data obtained from a lymphoma sample, and specific algorithms for predicting survival and clinical outcome in a subject suffering from a lymphoma. The gene expression profile data set was established using a human genome gene chip set measuring the expression of over 27,000 genes in more than 500 lymphoproliferative tumor samples collected from patients at numerous healthcare institutions worldwide.

This invention could be developed into a useful pharmacogenomic, diagnostic product. The number of genes required for an accurate prognosis is reduced almost ten-fold from the human genome gene chip, allowing for lower density microarray technology and alternative gene expression measuring platforms. The choice of the gene set in this invention is optimized to provide an all in one method for the diagnosis of all lymphomas.

In addition to licensing, the technology is available for further development through collaborative research with the inventors via a Cooperative Research and Development Agreement (CRADA).

HGC–1, a Gene Encoding a Member of the Olfactomedin-Related Protein Family

Griffin P. Rodgers, Wen-Li Liu, Jiachang Zhang (NIDDK),
U.S. Provisional Patent Application 60/338,759 filed 07 Dec 2001 (DHHS Reference No. E–166–2001/0–US–01); PCT Application No. PCT/US02/39148 filed 09 Dec 2002, which published as WO 03/050293 on 19 Jun 2003 (DHHS Reference No. E–166–2001/0–PCT–02),
Licensing Contact: Brenda Hefti; (301) 435–4632; *heftib@mail.nih.gov.*

The current technology embodies a newly identified gene, Human Granulocyte Colony-Stimulating Factor-Stimulated-Clone-1 (hGC–1) that has been cloned and characterized, and its protein sequence has been deduced. The gene is expressed in the bone marrow, prostate, small intestine, colon, and stomach, and has been mapped to chromosome 13 in a region that contains a tumor suppressor gene cluster. The gene is found to be selectively present

in normal human myeloid lineage cells and is believed to play a role in allowing lymphocytes to differentiate properly. It is believed that the gene may play a role in human prostate cancer, multiple myeloma, B-cell chronic lymphocytic leukemia and other types of cancer and can be used diagnostically as well as in therapeutic screening activities.

Tyrosyl-DNA Phosphodiesterases (TDP) and Related Polypeptides, Nucleic Acids, Vectors, TDP-Producing Host Cell, Antibodies and Methods of Use

Jeffrey J. Pouliot and Howard A. Nash (NIMH),

U.S. Patent Application No. 10/110,176 filed 05 Apr 2002 (DHHS Reference No. E–281–1999/0–US–03), claiming priority to U.S. Provisional Application No. 60/157,690 filed 05 Oct 1999 (DHHS Reference No. E–281–1999/0–US–01),

Licensing Contact: John Stansberry; (301) 451–7337; *stansbej@mail.nih.gov.*

Topisomerases are cellular enzymes that are vital for replication of the genome. However, if topisomerase and DNA form covalent complexes that prevent the resealing of DNA, this may lead to cell death. Essentially, this invention consists of a new isolated and cloned enzyme, tyrosyl-DNA phospodiesterase (TDP1) that is capable of hydrolyzing the covalent complexes between topisomerase and DNA, allowing the DNA to reseal. The mechanism that defines topiosomerases is their capacity to break DNA and, after an interval in which topological changes may occur, to reseal the break without the intervention of a high-energy cofactor. The breakage of the DNA is accompanied by the formation of a covalent bond between topisomerase and DNA to create an intermediate that is resolved during the resealing step. However, if the resealing step fails, the covalent intermediates between topoisomerase I and DNA can form complexes that lead to cell death. The failure of the resealing is increased by some chemotherapies such as camptothecin. Thus, this technology has many potential commercial uses including: a method for screening camptothecin analogues or other compounds for their resistance to repair by this enzyme or to prescreen patients for their sensitivity to topoisomerase inhibitors, which could identify patients most likely to respond to camptothecin therapy. Further, this invention provides for a vector comprising of the nucleic acid molecule for TDP1 as well as the method of altering the level of TDP1 in a cell, a tissue, an organ or an organism. Finally, this invention consists of a method for identifying a compound that stabilizes a covalent bond complex that forms between DNA and topoisomerase I, wherein the covalent bond cannot be cleaved.

Chromatin Insulator Protecting Expressed Genes of Interest for Human Gene Therapy or Other Mammalian Transgenic Systems

Drs. Jay H. Chung and Gary Felsenfeld (NIDDK),

U.S. Patent 5,610,053 issued 11 Mar 1997 (DHHS Reference No. E–206–1992/1–US–01), Licensing Contact: John Stansberry; (301) 435–5236; *stansbej@mail.nih.gov.*

The technology provides the isolation of a functional DNA sequence comprising a chromatin insulating element from a vertebrate system and provides the first employment of the pure insulator element as a functional insulator in mammalian cells. The technology further relates to a method for insulating the expression of a gene from the activity of cis-acting regulatory sequences in eukaryotic chromatin.

This technology could be of major importance in providing a mechanism and a tool to restrict the action of cis-acting regulatory elements on genes whose activities or encoded products are needed or desired to be expressed in mammalian transgenic systems. This technology provides the first pure insulator element to function solely as an insulator element in human cells. Accordingly, this technology could have tremendous practical implications for transgenic technology and human gene therapies, either *in vitro* or *in vivo*.

The technology further provides a method and constructs for insulating the expression of a gene or genes in transgenic animals such that the transfected genes will be protected and stably expressed in the tissues of the transgenic animal or its offspring. For example, even if the DNA of the construct integrates into areas of silent chromatin in the genomic DNA of the host animal, the gene will continue to be expressed. The invention could provide a means of improving the stable integration and expression of any transgenic construct of interest, with efficiencies higher than are achieved presently. Use of this invention may represent a large potential savings for licensee's constructing transgenic cell lines or animals.

Dated: March 2, 2005.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 05–4675 Filed 3–9–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 05–59, Review F30s.

Date: March 30, 2005.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lynn M. King, PhD, Scientific Review Administrator, Scientific Review Branch, 45 Center Dr., Rm 4AN–38K, National Institute of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402, (301) 594–5006.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 05–55, Review of R21s.

Date: April 11, 2005.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Rebecca Roper, MS, MPH, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, National Inst of Dental & Craniofacial Research, National Institutes of Health, 45 Center Dr., room 4AN32E, Bethesda, MD 20892, (301) 451–5096.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 05–56, Review R21s.

Date: April 22, 2005.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Rebecca Roper, MS, MPH, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, National Inst of Dental & Craniofacial Research, National Institutes of Health, 45 Center Dr., room 4AN32E, Bethesda, MD 20892, (301) 451–5096

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: March 3, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–4671 Filed 3–9–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Toxicology Program (NTP); NTP Liaison and Scientific Review Office; Announcement of Availability of NTP Roadmap for the 21st Century and NTP Celebration of its History

AGENCY: National Institute of Environmental Health Sciences (NIEHS); National Institutes of Health (NIH), HHS.

ACTION: Announcement of availability of a document and a symposium.

SUMMARY: The National Toxicology Program (NTP) announces availability of the document, ''A National Toxicology Program for the 21st Century: A Roadmap for the Future,'' and invites attendance at the symposium, ''The National Toxicology Program: A Quarter Century of Toxicology for Public Health'' on May 10–11, 2005, at the National Academy of Sciences in Washington, DC. This meeting will reflect on the history of the NTP and its impact on public health since its establishment in 1978 and unveil the NTP's plans and directions for the future.

DATES: The symposium will be held on May 10–11, 2005.

ADDRESSES: The symposium will be held at the National Academy of Sciences, 2100 C Street, NW., Washington, DC. Registration information and other details for the symposium are available on the NTP Web site (*http://ntp.niehs.nih.gov* select ''NTP 25 Years'') or by contacting Nan Cushing (*see* **FOR FURTHER INFORMATION CONTACT** below). The NTP Roadmap document is available electronically on the NTP Web site, (select ''NTP Vision & Roadmap'') or in printed text from the NTP Liaison and Scientific Review Office, P.O. Box 12233, MD A3–01, 111 TW Alexander Drive, Research Triangle Park, NC 27709 (mail); (919) 541–0530 (telephone); (919) 541–0530 (fax).

FOR FURTHER INFORMATION CONTACT: Nan Cushing, NTP Liaison and Scientific Review Office, 919–541–0530 (telephone), *cushing1@niehs.nih.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

Background

The NTP was established in 1978 to coordinate toxicological testing programs within the Department of Health and Human Services, develop and validate improved testing methods, develop approaches and generate data to strengthen scientific knowledge about potentially hazardous substances, and communicate with stakeholders. In its more than 25 years of existence, NTP has become a world leader in providing scientific information that improves our nation's ability to evaluate potential human health effects from chemical and physical exposures. The NTP maintains a number of complex, interrelated research and testing programs that provide unique and critical information needed by health regulatory and research agencies to protect public health. The NTP is hosting a symposium on May 10–11, 2005, to celebrate its leadership and contributions in protecting public health and present the NTP's roadmap for the 21st century.

NTP Roadmap for the Future

In August 2003, the NTP defined its vision for the 21st century and undertook a yearlong process to refine that vision and develop a roadmap for its implementation. The NTP Vision is to support the evolution of toxicology from a predominately observational science at the level of disease-specific models to a predominately predictive science focused upon a broad inclusion of target-specific, mechanism-based, biological observations. The NTP Roadmap described in the document, ''A National Toxicology Program for the 21st Century: A Roadmap for the Future,'' was developed with input from numerous groups including the NTP's Federal partners, its advisory committees, and the public. The NTP Roadmap identifies the challenges and opportunities confronting the program today and discusses the directions envisioned for the NTP in the 21st century in three main areas: (1) Refining traditional toxicology assays, (2) developing rapid, mechanism-based predictive screens for environmentally induced diseases, and (3) improving the overall utility of NTP products for public health decisions. Once implemented, it will strategically position the NTP at the forefront for providing scientific data and the interpretation of those data for public health decisionmaking. Presentation of the NTP's vision and roadmap will be a focus at the May symposium. The document is available electronically in PDF on the NTP Web site (*http://ntp.niehs.nih.gov* select ''NTP Vision and Roadmap'') or in printed text by contacting the NTP Liaison and Scientific Review Office (*see* **FOR FURTHER INFORMATION CONTACT** above).

Preliminary Agenda

The symposium begins each day at 9 a.m. and adjourns at 4:30 p.m. on May 10 and noon on May 11. The preliminary agenda topics are identified below.

May 10, 2005

- Welcome
- Implications of Health Policy and Health Legislation: Why Is the NTP Needed?
- Public Health in the 21st Century: NTP's Contributions and Challenges
- Invited Remarks
- NTP Goals: Their Importance to Public Health
  - —Coordination of Toxicology Testing
  - —Strengthening the Science Base in Toxicology
  - —Evolution of the NTP in Other Areas
  - —Partnerships and Communication
- Public Health Impact of the NTP
  - —Role of Safety Information on Agents with Environmental Exposure in Guiding Public Health Decisions
  - —Role of the Report on Carcinogens and the Center for the Evaluation of Risks to Human Reproduction in Guiding Public Health Decisions

May 11, 2005

- Welcome
- Toxicology's Role in Public Health Decisionmaking in the 21st Century
  - —Molecular Biology in Public Health Decisions
  - —Functional Genomics in Public Health Decisions
  - —Systems Biology in Public Health Decisions
- NTP in the 21st Century
- The Future of Environmental Health Research

• Closing Remarks

Registration

The symposium is open to the public with attendance limited only by the available space. Information about how to register to attend is available on the NTP Web site (*http://ntp.niehs.nih.gov* select ''NTP 25 Years'') or by contacting Ms. Cushing (*see* **FOR FURTHER INFORMATION CONTACT** above). Persons needing special assistance in order to attend are asked to contact Ms. Cushing at least 7 business days prior to the meeting.

Dated: March 2, 2005.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

[FR Doc. 05–4676 Filed 3–9–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 ICP–3 5OR: Behavioral and Social Sciences FIRCA.

Date: March 11, 2005.

Time: 3:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Dan D. Gerendasy, PhD, Scientific Review Administrator, Center for Scientific Review, National institutes of Health, 6701 Rockledge Drive, Room 5132, MSC 7843, Bethesda, MD 20892, (301) 594–6830, *gerendad@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, R01 Special Emphasis.

Date: March 18, 2005.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Marcia Steinberg, PhD, Scientific Review Administrator, Center for Scientific Reivew, National Institutes of Health, 6701 Rockledge Drive, Room 5130, MSC 7840, Bethesda, MD 20892, (301) 435–1023, *steinbem@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict.

Date: March 28, 2005.

Time: 11:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Marc Rigas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7826, Bethesda, MD 20892, (301) 402–1074, *rigasm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, AIDS/HIV SBIR/STTR Grants.

Date: April 4, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, 7400 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Kenneth A Roebuck, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7852, Bethesda, MD 20892, (301) 435–1166, *roebuckk@csr.nih.gov.*

Name or Committee: Center for Scientific Review Special Emphasis Panel, Approaches in Cancer Therapeutics.

Date: April 4, 2005.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015

Contact Person: Joanna M. Watson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6046–G, MSC 7804, Bethesda, MD 20892, (301) 435–1048, *watsonjo@csr.nih.gov.*

Name or Committee: Center for Scientific Review Special Emphasis Panel, Cancer Therapy

Date: April 4, 2005.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Suzanne L. Forry-Schaudies, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6192, MSC 7804, Bethesda, MD 20892, (301) 451–0131, *forryscs@csr.nih.gov.*

Name or Committee: Center for Scientific Review Special Emphasis Panel, Pain and Somatosensory.

Date: April 4, 2005.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joseph G. Rudolph, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7844, Bethesda, MD 20892, (301) 435–2212, *josephru@csr.nih.gov.*

Name or Committee: Center for Scientific Review Special Emphasis Panel, Pain and Somatosensory.

Date: April 5, 2005.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joseph G. Rudolph, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7844, Bethesda, MD 20892, (301) 435–2212, *josephru@csr.nih.gov.*

Name or Committee: Center for Scientific Review Special Emphasis Panel, Hyperaccelerated Award/Mechanisms in Immunomodulation Trials.

Date: April 5, 2005.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Samuel C. Edwards, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, MSC 7812, Bethesda, MD 20892, (301) 435–1152, *edwardss@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Control of Stem Cells.

Date: April 7, 2005.

Time: 10 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: James Harwood, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7840, Bethesda, MD 20892, (301) 435–1256, *harwoodj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Oral Dental

and Craniofacial Sciences Special Emphasis Panel.

Date: April 7, 2005.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: J. Terrell Hoffeld, PhD, DDS, Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, (301) 435–1781, *hoffeldt@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Yeast Prions.

Date: April 8, 2005.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Richard G. Kostriken, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7808, Bethesda, MD 20892, (301) 402–4454, *hostrikr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Pain and Samotosensory (5).

Date: April 8, 2005.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Joseph G. Rudolph, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7844, Bethesda, MD 20892, (301) 435–2212, *josephru@csr.nih.gov.*

(Catalogue of Federal Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.33, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 3, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–4672 Filed 3–9–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Lung Cancer Biomarkers.

Date: March 9, 2005.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Victor A. Fung, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6178, MSC 7804, Bethesda, MD 20892, 301–435–3504, *vf6n@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cancer Diagnostic and Treatment.

Date: March 10–11, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Elaine Sierra-Rivera, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7804, Bethesda, MD 20892, 301–435–1779, *riverase@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, AMCB Member Conflicts.

Date: March 21, 2005.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, 301–435–1167, *srinivar@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, VACC Member Conflicts.

Date: March 22, 2005.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ranga V. Srinivas. PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, (301) 435–1167, *srinivar@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Regulation of Melanoma Progression.

Date: March 23, 2005.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Zhiqiang Zou, MD, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6190, MSC 7804, Bethesda, MD 20892, 301–451–0132, *zouzhq@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Early Detection of Lung Cancer.

Date: March 24, 2005.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eva Peterakova, PhD MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7804, Bethesda, MD 20892, 301–435–1716, *petrakoe@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Vitamin D and Mammary Gland.

Date: March 25, 2005.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eun Ah Cho, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, (301) 451–4467, *choe@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Signaling Pathways and Tumorigenesis.

Date: March 28, 2005.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eun Ah Cho, PhD, Scientific Review Administrator, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, (301) 451–4467, *choe@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Biomarkers for Head, Neck and Breast Cancer.

Date: March 31, 2005.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Morris I. Kelsey, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6208, MSC 7804, Bethesda, MD 20892, 301–435–1718, *kelseym@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Mental Development.

Date: March 31, 2005.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Karen Lechter, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3128, MSC 7759, Bethesda, MD 20892, 301–496–0726, *lechterk@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–EMNR G(02).

Date: April 1, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Abubakar A. Shaikh, PhD, DVM, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6168, MSC 7892, Bethesda, MD 20892, 301–435–1042, *shaikha@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 3, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–4673 Filed 3–9–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Survey of Single State Authorities Regarding the HIV Set-Aside of the Substance Abuse Prevention and Treatment Block Grant—NEW

The Substance Abuse and Mental Health Services Administration's (SAMHSA), Center for Substance Abuse Treatment (CSAT) administers the Substance Abuse Prevention and Treatment (SAPT) Block Grant. This is a major source of funding for substance abuse activities in 60 jurisdictions, including all States and Territories. As part of the SAPT Block Grant, States with an AIDS case rate of 10 per 100,000 of population are required to set-aside a portion of SAPT Block Grant funding for early Human Immunodeficiency Virus (HIV) intervention. States that qualify are required to expend 2–5 percent of their yearly SAPT Block Grant funding on HIV Early Intervention Services (EIS) projects.

The purpose of the survey is to assess the status of HIV Services in substance abuse treatment systems in the States and Territories; including how HIV Set-Aside funds are being utilized, and what results are being accomplished through EIS, including counseling, testing, and treatment, and staff and program development. A questionnaire will be sent to the director of each Single State Authority for the SAPT Block Grant in the 60 States and Territories, with responses expected over a two-week period.

Below is the table of the estimated total burden hours:

Respondent	Number of respondents	Number of responses per respondent	Average burden hour	Estimated total burden (hours)
State Manager	60	1	1	60

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 71–1045, One Choke Cherry Road, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: March 4, 2005.

Patricia S. Bransford,

Acting Executive Officer, SAMHSA.

[FR Doc. 05–4681 Filed 3–9–05; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[DHS–2005–0019]

Homeland Security Advisory Council; Correction

AGENCY: Office of the Secretary, DHS.

ACTION: Notice of correction; notice of Federal Advisory Committee meeting.

SUMMARY: The Department of Homeland Security (DHS) is correcting a notice that was published in the **Federal Register** on March 7, 2005, at 70 FR 11017 which announced the holding of a meeting for the purposes of receiving reports and briefings, and member deliberations. In the **ADDRESSES** section to the notice, DHS inadvertently omitted the identification of the appropriate DHS docket number associated with the notice. DHS would like to announce that the DHS docket number for

submitting comments via to this notice is DHS–2005–0019. Directions for submitting comments using this method are outlined within 70 FR 11017.

DATES: This correction is effective March 10, 2005.

FOR FURTHER INFORMATION CONTACT: Mike Miron, Homeland Security Advisory Council, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published in the **Federal Register** on March 7, 2005 (70 FR 11017), the notice contains an error that is in need of correction.

Correction of Publication

Accordingly, the publication on March 7, 2005 (70 FR 11017), is corrected as follows:

1. On page 11017, in the third column, beginning on the third line of the heading after ''Office of the Secretary'' and before ''Homeland Security Advisory Council'', a new line should be added to read: ''DHS Docket Number DHS–2005–0019''

Dated: March 8, 2005.

Mary Kate Whalen,

Deputy-Associate General Counsel for Rules, Office of the General Counsel, U.S. Department of Homeland Security.

[FR Doc. 05–4875 Filed 3–8–05; 2:26 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2005–20517]

National Boating Safety Advisory Council

AGENCY: Coast Guard, DHS.

ACTION: Notice of meetings.

SUMMARY: The National Boating Safety Advisory Council (NBSAC) and its subcommittees on boats and associated equipment, aftermarket marine equipment, and prevention through people will meet to discuss various issues relating to recreational boating safety. All meetings will be open to the public.

DATES: NBSAC will meet on Saturday, April 9, 2005, from 1 p.m. to 5 p.m., on Monday, April 11, 2005, from 1:30 p.m. to 4:30 p.m., and on Tuesday, April 12, 2005, from 8:30 a.m. to 12 noon. The Prevention Through People Subcommittee will meet on Sunday, April 10, 2005, from 8:30 a.m. to 12 noon. The Boats and Associated Equipment Subcommittee will meet on Sunday, April 10, 2005, from 1:30 p.m. to 5 p.m. The Aftermarket Marine Equipment Subcommittee will meet on Monday, April 11, 2005, from 8:30 a.m. to 12 noon. These meetings may close early if all business is finished. On Sunday, April 10, a Subcommittee meeting may start earlier if the preceding Subcommittee meeting has closed early. Written material and requests to make oral presentations should reach the Coast Guard on or before Tuesday, March 22, 2005. Requests to have a copy of your material distributed to each member of the committee or subcommittees in advance of the meeting should reach the Coast Guard on or before Friday, March 11, 2005.

ADDRESSES: NBSAC will meet at the Radisson Summit Hill Knoxville Hotel, 401 Summit Hill Drive, Knoxville, TN 37902. The subcommittee meetings will be held at the same address. Send written material and requests to make oral presentations to Mr. Phil Cappel, Executive Director of NBSAC, Commandant (G–OPB–1), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov* or at the Web site for the Office of Boating Safety at URL address *http://www.uscgboating.org.*

FOR FURTHER INFORMATION CONTACT: Phil Cappel, Executive Director of NBSAC, telephone 202–267–0988, fax 202–267–4285. You may obtain a copy of this notice by calling the U. S. Coast Guard Infoline at 1–800–368–5647.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Tentative Agendas of Meetings

National Boating Safety Advisory Council (NBSAC). The agenda includes the following:

(1) Remarks—Captain Scott H. Evans, Deputy Director of Operations Policy.

(2) Swearing in of recent appointees (includes new members and continued members).

(3) Chief, Office of Boating Safety Update on NBSAC Resolutions and Recreational Boating Safety Program report.

(4) Executive Director's report.

(5) Recreational Boating Safety Program Goal Setting Project.

(6) Chairman's session.

(7) Report from TSAC Liaison.

(8) Report from NAVSAC Liaison.

(9) Coast Guard Auxiliary report.

(10) National Association of State Boating Law Administrators Report.

(11) Wallop Breaux reauthorization update.

(12) Update on development of Vessel Identification System.

(13) Report on future boating studies.

(14) Prevention Through People Subcommittee report.

(15) Boats and Associated Equipment Subcommittee report.

(16) Aftermarket Marine Equipment Subcommittee report.

Boats and Associated Equipment Subcommittee. The agenda includes the following: Discuss current regulatory projects, grants, contracts and new issues impacting boats and associated equipment.

Aftermarket Marine Equipment Subcommittee. The agenda includes the following: Discuss current regulatory projects, grants, contracts and new issues impacting aftermarket marine equipment.

Prevention Through People Subcommittee. The agenda includes the following: Discuss current regulatory projects, grants, contracts and new issues impacting prevention through people.

Procedural

All meetings are open to the public. At the Chairs' discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Executive Director of your request no later than Tuesday, March 22, 2005. Written material for distribution at a meeting should reach the Coast Guard no later than Tuesday, March 22, 2005. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of a meeting, please submit 25 copies to the Executive Director no later than Friday, March 11, 2005.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: March 4, 2005.

James W. Underwood,

Rear Admiral, U.S. Coast Guard, Director of Operations Policy.

[FR Doc. 05–4753 Filed 3–9–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4972–N–03]

Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request; Grant Application for Housing for People Who Are Homeless and Addicted to Alcohol

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* March 24, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within fourteen (14) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: HUD Desk Officer, Office of Management and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Paperwork Reduction Act Compliance Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; 3-mail *Wayne—Eddins@HUD.gov*; telephone (202) 708-2374. This is not a toll-free number. Copies of documentation submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, a proposed information collection requirement as described below. This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Grant Application for Housing for People who are Homeless and Addicted to Alcohol.

Description of Information Collection: This is an application for a program that will provide supporting housing assistance to chronically homeless persons who have been living on the streets for at least three hundred sixty-five (365) days over the last five (5) years and have a long-term addiction to alcohol. The information to be collected includes project information, program component and type, number of beds and participants, leasing information and the subpopulations to be assisted. We need to collect this information so that we fully understand the scope of the project and so that the applicant would be eligible to apply for renewal funds through the Continuum of Care process once the grant term expires.

OMB Control Number: To be assigned.

Agency Form Numbers: HUD–40112. Plus standard grant application forms SF 424, HUD–2991, SF–424–SUPP, HUD 27300, HUD–96011, HUD–96010, OMB–SF–LLL, SF–424A.

Members of Affected Public: States, local government, other government agencies, and public and private nonprofit agencies.

Estimation of the total numbers of hours needed to prepare the information collection: No more than 100 applicants are expected to respond to this NOFA, and this will be a one-time collection effort. Program staff determines that it will take approximately ten (10) hours to complete this form.

Status: Proposed new collection.

Authority: The Paper Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: March 4, 2005.

Nelson Bregón,

General Deputy Assistant Secretary, Community Planning and Development.

[FR Doc. 05–4661 Filed 3–9–05; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Great Lakes Panel on Aquatic Nuisance Species Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Aquatic Nuisance Species (ANS) Task Force Great Lakes Panel on Aquatic Nuisance Species. The meeting is open to the public. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION** section.

DATES: The Great Lakes Panel on Aquatic Nuisance Species will meet from 9 a.m. to 5 p.m. on Thursday, April 14, 2005 and from 8:30 a.m. to 2 p.m. on Friday, April 15, 2005. Minutes of the meeting will be available for public inspection during regular business hours, Monday through Friday.

ADDRESSES: The Great Lakes Panel on Aquatic Nuisance Species meeting will be held at the Courtyard by Marriott, 3205 Boardwalk, Ann Arbor, Michigan 48108. Phone (734) 995–5900. Minutes of the meeting will be maintained in the office of Chief, Division of Environmental Quality, U.S. Fish and Wildlife Service, Suite 322, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622.

FOR FURTHER INFORMATION CONTACT: Kathe Glassner-Shwayder, Great Lakes Panel on Aquatic Nuisance Species member and Senior Project Manager, Great Lakes Commission at (734) 971–9135 *shwayder@glc.org* or Pam Meacham, Aquatic Nuisance Species Task Force, at 703–358–1796.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces meetings of the Aquatic Nuisance Species Task Force Great Lakes Panel on Aquatic Nuisance Species. The ANS Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990. The Great Lakes Panel on Aquatic Nuisance Species was established by the ANS Task Force in 1991. The Great Lakes Panel on Aquatic Nuisance Species, comprised of representatives from Federal, State, local agencies and from private environmental and commercial interests, performs the following activities:

a. Identifies priorities for activities in the Great Lakes,

b. Develops and submits recommendations to the national Aquatic Nuisance Species Task Force,

c. Coordinates aquatic nuisance species program activities in the Great Lakes,

d. Advises public and private interests on control efforts, and

e. Submits an annual report to the Aquatic Nuisance Species Task Force.

The purpose of the Panel is to advise and make recommendations to the Aquatic Nuisance Species Task Force on issues relating to the Great Lakes region of the United States that includes eight Great Lakes States: Illinois, Indiana, Michigan, Minnesota, New York, Pennsylvania, Ohio and Wisconsin. The Great Lakes Panel on Aquatic Nuisance Species will discuss several topics at this meeting including: progress reports on the Aquatic Invasive Species action plan; the Panel's draft operational guidance; the Great lakes Regional Collaboration and related significance for Aquatic Invasive Species work in the region, including for the Great Lakes Panel; committee meetings (Research, Information/Education, and Legislation/Policy); progress reports from Great Lakes panel projects and Great Lakes Commission projects (ANS–GIS, Early Detection, Rapid Response); recommendations for the ANS Task Force; and updates from Panel member organizations and states.

Dated: February 28, 2005.

Mamie A. Parker,

Co-Chair, Aquatic Nuisance Species Task Force, Assistant Director—Fisheries & Habitat Conservation.

[FR Doc. 05–4699 Filed 3–9–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Detection and Monitoring Committee Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Detection and Monitoring Committee of the Aquatic Nuisance Species Task Force. The meeting is open to the public. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION.**

DATES: The Committee will meet from 8:30 a.m. to 5 p.m., Tuesday, March 22, 2005.

ADDRESSES: The meeting will be held at the Smithsonian Environmental Research Center, 647 Contees Wharf Rd., Edgewood, Maryland. Phone (443) 482–2200.

FOR FURTHER INFORMATION CONTACT: Pam Fuller, Chair, Detection and Monitoring Committee, at (352) 264–3481 or by e-mail at: *Pam_Fuller@usgs.gov* or Pam Meacham, Acting Executive Secretary, Aquatic Nuisance Species Task Force at (703) 358–1796 or by e-mail at: *pam_meacham@fws.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Aquatic Nuisance Species Task Force Detection and Monitoring Committee. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701–4741). Topics to be addressed at this meeting include: A discussion of the committee's goals; a demonstration of the USGS database on sampling protocols for aquatic invasive species, followed by discussion on standardized protocols and reviewer recommendations; presentations by selected monitoring programs focusing on geographic location, habitat, sampling techniques and species sampled; and discussion of a framework for inventorying monitoring activities and data management for aquatic invasive species in the U.S.

Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 810, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622. Minutes for the meetings will be available at this location for public inspection during regular business hours, Monday through Friday.

Dated: March 2, 2005.

Mamie A. Parker,

Co-Chair, Aquatic Nuisance Species Task Force, Assistant Director—Fisheries and Habitat Conservation.

[FR Doc. 05–4700 Filed 3–7–05; 11:44 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Northeast Regional Panel Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Aquatic Nuisance Species (ANS) Task Force Northeast Regional Panel. The meeting is open to the public. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION** section.

DATES: The Northeast Regional Panel will meet from 1 p.m. to 5 p.m. on Wednesday, May 4, 2005, and 8:30 a.m. to 4 p.m. on Thursday, May 5, 2005. Minutes of the meeting will be available for public inspection during regular business hours, Monday through Friday.

ADDRESSES: The Northeast Regional Panel meeting will be held at the Urban Forestry Center, 45 Elwyn Road, Portsmouth, NH 03801. Phone (603) 431–6774. Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 810, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622.

FOR FURTHER INFORMATION CONTACT: Michele Tremblay, NEANS Panel Program Manager at (603) 796–2615 or, by e-mail, at *info@northeastans.org* or Pam Meacham, Aquatic Nuisance Species Task Force, at (703) 358–1796.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Aquatic Nuisance Species Task Force Northeast Regional Panel. The ANS Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990. The Northeast Regional Panel was established by the ANS Task Force in 2001. The NEANS Panel, comprised of representatives from Federal, State, and local agencies and from private environmental and commercial interests, performs the following activities:

a. Identifies priorities for the Northeast Region with respect to aquatic nuisance species,

b. Makes recommendations to the Task Force,

c. Assists the Task Force in coordinating Federal aquatic nuisance species program activities in the Northeast region,

d. Coordinates aquatic nuisance species program activities in the Northeast region,

e. Provides advice to public and private individuals and entities concerning methods of controlling aquatic nuisance species, and

f. Submits an annual report describing activities within the Northeast region related to aquatic nuisance species prevention, research, and control.

The purpose of the Panel is to advise and make recommendations to the Aquatic Nuisance Species Task Force on issues relating to the Northeast region of the United States that includes seven

Northeast region States: Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, and New York. The Northeast Regional Panel will discuss several topics at this meeting including: Future panel meeting scheduling; activities updates of the ANS Task Force and Invasive Species Council and other groups; roundtable; committee break-out planning sessions and updates; research priorities; New York State highlights; New England rapid assessment progress; New Hampshire outreach pilot program; pet industry panel; and a feature on an aquatic or marine plant or animal species.

Dated: February 23, 2005.

Mamie Parker,

Co-Chair, Aquatic Nuisance Species Task Force, Assistant Director—Fisheries & Habitat Conservation.

[FR Doc. 05–4701 Filed 3–9–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Mid-Atlantic Panel on Aquatic Nuisance Species Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Aquatic Nuisance Species (ANS) Task Force Mid-Atlantic Panel on Aquatic Nuisance Species. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION** section. The meeting is open to the public.

DATES: The Mid-Atlantic Panel on Aquatic Nuisance Species will meet from 10 a.m. to 4:45 p.m. on Thursday, March 31, 2005 and from 10 a.m. to 3 p.m. on Friday, April 1, 2005. Minutes of the meeting will be available for public inspection during regular business hours, Monday through Friday.

ADDRESSES: The Mid-Atlantic Panel on Aquatic Nuisance Species meeting will be held at the U.S. Fish and Wildlife Service Chesapeake Bay Field Office, 177 Admiral Cochrane Drive, Annapolis, MD 21401. Phone (410) 573–4517. Minutes of the meeting will be maintained in the office of Chief, Division of Environmental Quality, U.S. Fish and Wildlife Service, Suite 322, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622.

FOR FURTHER INFORMATION CONTACT: Jennifer Greiner, Mid-Atlantic Panel on Aquatic Nuisance Species Interim Chair at (410) 267–5783 or Pam Meacham, Aquatic Nuisance Species Task Force, at (703) 358–1796.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces meetings of the Aquatic Nuisance Species Task Force Mid-Atlantic Panel on Aquatic Nuisance Species. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990. The Mid-Atlantic Panel on Aquatic Nuisance Species was established by the ANS Task Force in 2003. The Mid-Atlantic Panel on Aquatic Nuisance Species, comprised of representatives from Federal, State, local agencies and from private environmental and commercial interests, performs the following activities:

a. Identifies priorities for activities in the Mid-Atlantic region,

b. Develops and submits recommendations to the national Aquatic Nuisance Species Task Force,

c. Coordinates aquatic nuisance species program activities in the Mid-Atlantic region,

d. Advises public and private interests on control efforts, and

e. Submits an annual report to the Aquatic Nuisance Species Task Force.

The purpose of the Panel is to advise and make recommendations to the Aquatic Nuisance Species (ANS) Task Force on issues relating to the Mid-Atlantic region of the United States that includes nine Mid-Atlantic States: Delaware, District of Columbia, Maryland, North Carolina, New Jersey, New York, Pennsylvania, Virginia, and West Virginia. The Mid-Atlantic Panel on Aquatic Nuisance Species will discuss several topics at this meeting including: An overview of the ANS Task Force and Regional Panels; ANS Task Force Outreach and Education programs; priority ANS species in North Carolina and the Chesapeake and Delaware Bay watersheds; regional projects; organization, operations and budget of the Mid-Atlantic Regional Panel; work plan development; and the formation of work groups.

Dated: March 3, 2005.

Everett Wilson,

Acting Co-Chair, Aquatic Nuisance Species Task Force, Assistant Director—Fisheries & Habitat Conservation.

[FR Doc. 05–4702 Filed 3–9–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Amendments to Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Desert Rock Energy Project, San Juan County, NM

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs is amending its Notice of Intent to Prepare an Environmental Impact Statement (EIS) for the proposed Desert Rock Energy Project, San Juan County, New Mexico, published in the **Federal Register** on November 10, 2004 (69 FR 65215), which described the proposed action. The amendments: (1) Add the Office of Surface Mining Reclamation and Enforcement, the Bureau of Land Management and the U.S. Environmental Protection Agency (EPA) as cooperating agencies; (2) include the mining of up to six million more tons of coal per year from the BHP Navajo Coal Company lease area and delivery of that coal to the proposed power plant, plus the issuance of permits required under the Clean Water Act by the Army Corps of Engineers and/or the EPA, for analysis in the EIS; (3) announce five more public scoping meetings to identify potential issues and alternatives for inclusion in the EIS; and (4) extend the period for public comment on scoping for the EIS.

DATES: Written comments addressing issues or alternatives to be considered in the EIS or other information bearing on the EIS must arrive by April 11, 2005. The additional public scoping meetings will be held March 28, 29 (2 meetings), 30, and 31, 2005.

ADDRESSES: You may mail or hand carry written comments to Eloise Chicharello, Director, Navajo Regional Office, Bureau of Indian Affairs, PO Box 1060, Gallup, New Mexico 87305.

The addresses and times for the public scoping meetings are:

1. March 28, 2005—Cortez Middle School Cafeteria, 450 West 2nd Street, Cortez, Colorado, 4 p.m. to 8 p.m.

2. March 29, 2005—Sanostee Chapter House, Highway 491, Navajo Nation, 10 a.m. to 2 p.m.,and Burnham Chapter House, Navajo Nation, 4 p.m. to 8 p.m.

3. March 30, 2005—Auxiliary Gymnasium, Shiprock High School, Highway 64 West, Shiprock, New Mexico, 4 p.m. to 8 p.m.

4. March 31, 2005—Indian Pueblo Cultural Center, Silver & Turquoise

Room, 2401 12 Street NW, Albuquerque, New Mexico, 4 p.m. to 8 p.m.

An EPA representative will be present at the Albuquerque public meeting.

FOR FURTHER INFORMATION CONTACT: Loretta A.W. Tsosie, (505) 863–8296, or Richard Knox, (602) 861–7428.

SUPPLEMENTARY INFORMATION: Sithe Global Power, LLC, a privately held, independent power company, and Diné Power Authority, an enterprise of the Navajo Nation established by the Navajo Nation Council to promote the development of energy resources, have entered into a joint agreement to develop a coal-fired electric power-generating plant on a 600-acre site approximately 30 miles southwest of Farmington, New Mexico. Coal to support the long-term production of electricity may be mined from the adjacent BHP Navajo Coal Company lease area, hence the Office of Surface Mining Reclamation and Enforcement would approve any necessary permits for the existing lessee to mine additional areas of the coal lease and construct a coal-handling facility for delivery of coal to the proposed electric power-generating plant.

Resources and issues so far identified for analysis in the EIS include air, geology, soils, water, vegetation, wildlife, special status species, land use, access, visual resources, noise, social and economic conditions, environmental justice, hazardous materials, and cultural and paleontological resources. Analyses will address requirements of the Clean Water Act, Clean Air Act, Endangered Species Act, National Historic Preservation Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response Compensation and Liability Act, Surface Mining Control and Reclamation Act, and others, as needed. Alternatives to be analyzed include, at a minimum, the proposed action and no action. The range of issues and alternatives to be addressed may be expanded based on comments received during the scoping process.

Public Comment Availability

Comments, including names and addresses of respondents, will be available for public review at the mailing address shown in the **ADDRESSES** section, during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Authority

This notice is published in accordance with section 1503.1 of the Council on Environmental Quality Regulations (40 CFR Parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Principal Deputy Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: February 23, 2005.

Michael D. Olsen,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 05–4688 Filed 3–9–05; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

National Park Service

Public Notice

AGENCY: National Park Service, Interior.

SUMMARY: Pursuant to 36 CFR 51.23, public notice is hereby given that the National Park Service proposes to extend the following expiring concession contracts for a period of up to one year, or until such time as a new contract is executed, whichever occurs sooner.

SUPPLEMENTARY INFORMATION: All of the listed concession authorizations will expire by their terms on or before December 31, 2004. The National Park Service has determined that the proposed short-term extensions are necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption. These extensions will allow the National Park Service to complete and issue prospectuses leading to the competitive selection of concessioners for new long-term concession contracts covering these operations.

Concid ID number	Concessioner name	Park
BOST002–88	Boston Concessions	Boston NHP.
GATE019–01	Dover Gourmet	Gateway NRA.
SHEN001–85	ARAMARK	Shenandoah NP.

EFFECTIVE DATE: January 2, 2005.

FOR FURTHER INFORMATION CONTACT: Jo A. Pendry, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone (202) 513–7156.

Dated: December 17, 2004.

Alfred J. Poole, III,

Acting Associate Director, Administration Business Practices and Workforce Development.

[FR Doc. 05–4730 Filed 3–9–05; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Draft General Management Plan and Environmental Impact Statement for the First Ladies National Historic Site, Ohio; Correction

AGENCY: National Park Service.

ACTION: Notice of availability of the draft general management plan and draft environmental impact statement for the First Ladies National Historic Site, Ohio; correction.

SUMMARY: In the December 28, 2004, **Federal Register**, the National Park Service (NPS) announced the availability of the draft general management plan and environmental impact statement (GMP/EIS) for the First Ladies National Historic Site (the park). Due to unanticipated delays, the document will not be available until April 25, 2005.

Correction: The draft GMP/EIS will be made available for public review for 60 days following the publishing of the notice of availability in the **Federal Register** by the Environmental

Protection Agency. The NPS will notice the draft GMP/EIS availability and public meetings in local media and on the Planning, Environment, and Public Comment Web site at the following address: *http://parkplanning.nps.gov/publicHome.cfm.*

ADDRESSES: Copies of the GMP/EIS will be available by request by writing to the First Ladies National Historic Site, c/o Site Manager, 8095 Mentor Avenue, Mentor, Ohio 44060, by telephoning 440–974–2993 or by e-mail to *carol_j_spears@nps.gov.* The document will also be available to be picked up in person at the First Ladies National Historic Site, 331 Market Avenue South, Canton, Ohio 44702.

Dated: January 31, 2005.

Ernest Quintana,

Regional Director, Midwest Region.

[FR Doc. 05–4738 Filed 3–9–05; 8:45 am]

BILLING CODE 4312–86–P

DEPARTMENT OF THE INTERIOR

National Park Service

Cape Cod National Seashore, South Wellfleet, Massachusetts; Cape Cod National Seashore Advisory Commission Two Hundred Fifty-Second Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, Section 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held on April 11, 2005.

The Commission was reestablished pursuant to Pub. L. 87–126 as amended by Pub. L. 105–280. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The Commission members will meet at 1 p.m. in the meeting room at Salt Pond Visitor Center, Eastham, Massachusetts for the regular business meeting to discuss the following:

1. Adoption of Agenda
2. Approval of Minutes of Previous Meeting (February 14, 2005)
3. Reports of Officers
4. Reports of Subcommittees
   Nickerson Fellowship Subcommittee Report
5. Superintendent's Report
   Update on Salt Pond Visitor Center Project
   Update on Highlands Center Project
   Update on Hunting EIS
   Update on Dune Shack issue
   Update on Proposed Herring River Restoration Project
   Update on ORV Permits
   News from Washington
6. Old Business
7. New Business
8. Date and agenda for next meeting
9. Public comment and
10. Adjournment

The meeting is open to the public. It is expected that 15 persons will be able to attend the meeting in addition to Commission members.

Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent at least seven days prior to the meeting. Further information concerning the meeting may be obtained from the Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667.

Dated: February 18, 2005.

Michael B. Murray,

Acting Superintendent.

[FR Doc. 05–4736 Filed 3–9–05; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

Gettysburg National Military Park Advisory Commission

AGENCY: National Park Service.

ACTION: Notice of two meetings to be held on April 7, 2005 and October 6, 2005.

SUMMARY: This notice sets forth the dates of April 7, 2005 and October 6, 2005 of the Gettysburg National Military Park Advisory Commission.

DATES: The public meetings will be held on April 7, 2005 and October 6, 2005 from 7 p.m. to 9 p.m.

Location: The meetings will be held at the Cyclorama Auditorium, 125 Taneytown Road, Gettysburg, Pennsylvania 17325.

Agenda: The April 7, 2005 and October 6, 2005 meetings will consist of the Sub-Committee Reports from the Historical, Executive, and Interpretive Committees; Federal Consistency Reports Within the Gettysburg Battlefield Historic District; Operational Updates on Park Activities, which consists of an update on the Gettysburg National Battlefield Museum Foundation and National Park Service activities related to the new Visitor Center/Museum Complex, updates on the Wills House and Train Station; Transportation which consists of the National Park Service and the Gettysburg Borough working on the Shuttle System; Update on Land Acquisition within the park boundary or in the historic district; and the Citizens Open Forum where the public can make comments and ask questions on any park activity.

FOR FURTHER INFORMATION CONTACT: John A. Latschar, Superintendent, Gettysburg National Military Park, 97 Taneytown Road, Gettysburg, Pennsylvania 17325.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to the Gettysburg National Military Park Advisory Commission, 97 Taneytown Road, Gettysburg, Pennsylvania 17325.

Dated: February 23, 2005.

John A. Latschar,

Superintendent, Gettysburg NMP/Eisenhower NHS.

[FR Doc. 05–4735 Filed 3–9–05; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF INTERIOR

National Park Service

Great Sand Dunes National Park Advisory Council Meeting

AGENCY: National Park Service, DOI.

ACTION: Announcement of meeting.

SUMMARY: Great Sand Dunes National Park and Preserve announces two meetings of the Great Sand Dunes National Park Advisory Council, which was established to provide guidance to the Secretary on long-term planning for Great Sand Dunes National Park and Preserve.

DATES: The meeting dates are:

1. March 3, 2005, 8:30 a.m.–4:30 p.m., Mosca, Colorado.
2. April 28, 2005, 8:30 a.m.–4:30 p.m., Crestone, Colorado.

ADDRESSES: The meeting location is:

1. Mosca, Colorado—Great Sand Dunes National Park and Preserve Visitor Center, 11500 Highway 150, Mosca, CO 81146.
2. Crestone, Colorado—The Baca Grande Property Owners' Association Building, 68575 County Road T, Crestone, CO 81131.

FOR FURTHER INFORMATION CONTACT: Steve Chaney, 719–378–6312.

SUPPLEMENTARY INFORMATION: At its March 3 meeting, the Great Sand Dunes National Park Advisory Council will

meet to review public input received through earlier public meetings regarding draft alternatives for the park's general management plan. Based on the range of alternatives being considered, they will discuss what kinds of impact topics should be included in the Environmental Impact Statement. The public is invited to provide comments to the Advisory Council between 4 and 4:30 p.m.

At its April 28 meeting, the Great Sand Dunes National Park Advisory Council will meet to review NPS preliminary findings on impacts and costs of general management plan alternatives, and will discuss what factors should be considered when the NPS selects a preferred alternative. The public is invited to provide comments to the Advisory Council between 4 and 4:30 p.m. The April 28 meeting will be held at the Baca Grande Property Owners Association Building, 68575 County Road T, which is located four miles west of the town of Crestone on County Road T, immediately after the golf course on the north side of the road.

Stephen P. Martin,

Regional Director.

[FR Doc. 05–4731 Filed 3–9–05; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Capital Memorial Advisory Commission; Notice of Public Meeting

AGENCY: Department of the Interior, National Park Service, National Capital Memorial Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that a meeting of the National Capital Memorial Advisory Commission (the Commission) will be held on Tuesday, March 15, 2005, at 1:30 p.m., at the National Building Museum, Room 312, 401 F Street, NW., Washington, DC.

The purpose of the meeting will be to discuss currently authorized and proposed memorials in the District of Columbia and its environs. In addition to discussing general matters and conducting routine business, the Commission will review:

Action Items

(1) Site Selection Study, Vietnam Veterans Memorial Education Center.

(2) Legislation currently under consideration by the 109th Congress.

Informational Items

(1) Congressional actions taken on bills previously reviewed by the Commission.

Other Business

(1) General matters and routine business.

The meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed. Persons who wish to file a written statement or testify at the meeting or who want further information concerning the meeting may contact Ms. Nancy Young, Secretary to the Commission, at (202) 619–7097.

DATES: March 15, 2005, at 1:30 p.m.

ADDRESSES: National Building Museum, Room 312, 401 F Street, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Young, Secretary to the Commission, 202–619–7097.

SUPPLEMENTARY INFORMATION: The Commission was established by Public Law 99–652, the Commemorative Works Act (40 U.S.C. Chapter 89 *et seq.*), to advise the Secretary of the Interior (the Secretary) and the Administrator, General Services Administration, (the Administrator) on policy and procedures for establishment of, and proposals to establish, commemorative works in the District of Columbia and its environs, as well as such other matters as it may deem appropriate concerning commemorative works.

The Commission examines each memorial proposal for conformance to the Commemorative Works Act, and makes recommendations to the Secretary and the Administrator and to Members and Committees of Congress. The Commission also serves as a source of information for persons seeking to establish memorials in Washington, DC, and its environs.

The members of the Commission are as follows:

Director, National Park Service.
Chairman, National Capital Planning Commission.
Architect of the Capitol.
Chairman, American Battle Monuments Commission.
Chairman, Commission of Fine Arts.
Mayor of the District of Columbia.
Administrator, General Services Administration.
Secretary of Defense.

Dated: February 2, 2005.

Joseph M. Lawler,

Regional Director, National Capital Region.

[FR Doc. 05–4733 Filed 3–9–05; 8:45 am]

BILLING CODE 4312–JK–M

DEPARTMENT OF THE INTERIOR

National Park Service

Selma To Montgomery National Historic Trail Advisory Council Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act, Pub. L. 92–463, that a meeting of the Selma to Montgomery National Historic Trail Advisory Council will be held Wednesday, April 13, 2005 at 9 a.m. until 3:30 p.m., at the Performance Art Centre of Selma, Inc. in Selma, AL.

The Selma to Montgomery National Historic Trail Advisory Council was established pursuant to Pub. L. 100–192 establishing the Selma to Montgomery National Historic Trail. This Council was established to advise the National Park Service on such issues as preservation of trail routes and features, public use, standards for posting and maintaining trail markers, and administrative matters.

The matters to be discussed include:

(A) Review of last meeting Minutes

(B) 40th Anniversary Updates

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited and persons will be accommodated on first come, first serve basis. Anyone may file a written statement with Catherine F. Light, Trail Superintendent concerning the matters to be discussed.

Person wishing further information concerning this meeting may contact Catherine F. Light, Trail Superintendent, Selma to Montgomery National Historic Trail, at (334) 727–6390 (phone), (334) 727–4597 (fax) or mail 1212 Old Montgomery Road, Tuskegee Institute, Alabama 36088.

Catherine F. Light,

Selma to Montgomery National Historic Trail, Superintendent.

[FR Doc. 05–4732 Filed 3–9–05; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before February 19, 2005. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under

the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, (202) 371–6447. Written or faxed comments should be submitted by March 25, 2005.

Carol D. Shull,

Keeper of the National Register of Historic Places.

CALIFORNIA

Los Angeles County

El Cabrillo, 1832–1850 N. Grace Ave., Los Angeles, 05000211
Second Church of Christ Scientist, 655 Cedar Ave., Long Beach, 05000212
Security-First National Bank of Los Angeles, 529 Wilshire Blvd., Los Angeles, 05000213
Wayfarers Chapel, 5755 Palos Verdes Dr. S., Rancho Paolos Verdes, 05000210

COLORADO

Pueblo County

Squirrel Creek Recreational Unity, San Isabel National Forest, Beulah, 05000215

San Miguel County

Fort Peabody, Uncompahgre National Forest, Telluride, 05000214

FLORIDA

Washington County

Chipley City Hall, 672 Fifth St., Chipley, 05000216

MASSACHUSETTS

Hampden County

Smith, Thomas and Esther, House, 251 North West St., Agawam, 05000217

Hampshire County

Bisbee Mill, 66 East St., Chesterfield, 05000219

Norfolk County

Franklin Common Historic District, Main, High, Union, Pleasant Sts. and Church Sq., Franklin, 05000218

MISSOURI

Jackson County

Pickwick Hotel, Office Building, Parking Garage and Bus Terminal, 901–937 McGee St., 301–311 E. 9th St., 300–310 E. Tenth St., 906–912 Oak St., Kansas City, 05000220

NEW JERSEY

Morris County

Gibbons, William, Stable and Farm, Loantaka Way, Chatham Township, 05000222

Somerset County

South Branch Schoolhouse, South Branch River Rd., Township of Branchburg, 05000221

NEW YORK

Bronx County

242nd Street—Van Corlandt Park Station (IRT), (New York City Subway System MPS) Above Broadway at the jct. of W. 242nd St., Bronx, 05000226
Westchester Square Station (Dual System IRT), Above Westchester Ave., from Overing St. to Ferris Place, Bronx, 05000227

New York County

145th Street Subway Station (IRT), (New York City Subway System MPS) Under Lenox Avenue at the jct. with 145th St., New York, 05000231
168th Street Subway Station (IRT), (New York City Subway System MPS) Under Broadway at the jct. of W. 168th St., New York, 05000232
181st Street Subway Station (IND), (New York City Subway System MPS) Fort Washington Ave., Vet. W. 185th and 181st Sts., New York, 05000233
181st Street Subway Station (IRT), (New York City Subway System MPS) Under St. Nicholas Ave. bet. W. 181st and W. 180th Sts.s, New York, 05000224
190th Street Subway Station (IND), (New York City Subway System MPS) Under Fort Washington Ave. bet. Fort Tryon Park (Cabrini Blvd.) and W. 190th St., New York, 05000225
28th Street Subway Station (IRT), (New York City Subway System MPS) Under Park Avenue S., bet. E. 29th and 27th Sts., New York, 05000230
86th Street Subway Station (Dual System IRT), (New York City Subway System MPS) Under Lexington Ave., bet. E. 85th and E. 87th Sts., New York, 05000236
Chambers Street Subway Station (Dual System IRT), (New York City Subway System MPS) Under West Broadway bet. Warren, Chambers and Reade Sts., New York, 05000234
Pelham Parkway Station (Dual System IRT), (New York City Subway System MPS) Jct. of White Plains Rd. and Pelham Pkwy, Bronx, 05000228
West 28th Street Subway Station (Dual System IRT), (New York City Subway System MPS) Seventh Ave. bet. West 26th and West 29th Sts., New York, 05000235
West 4th Street Subway Station (IND), (New York City Subway System MPS) Under Sixth Ave. bet. W. 3rd St. and Waverly Place, New York, 05000223

Queens County

45th Road—Court House Square Station (Dual System IRT), (New York City Subway System MPS) Above 23rd St. bet. 44th Dr. and 45th Rd., Queens, 05000229

SOUTH DAKOTA

Codington County

Zech Farmstead, 16676 456th Ave., Watertown, 05000237

TEXAS

Atascosa County

Republic National Bank, 300 N. Ervay/325 N. St. Paul St., Dallas, 05000243

Collin County

Farmersville Masonic Lodge No. 214, A.F. and A.M, 101 S. Main St., Farmersville, 05000245

Fort Bend County

Lamar—Calder House, 915 Front St., Richmond, 05000244

Galveston County

Fort Travis, TX 87 at Loop 108, Port Bolivar, 05000247

Harris County

Neuhaus, Hugo V., Jr., House, 2910 Lazy Ln., Houston, 05000246

Tarrant County

Leuda—May Historic District, 301–311 W. Leuda and 805–807 May Sts., Fort Worth, 05000240

Travis County

George Washington Carver Library, 1165 Angelina St., Austin, 05000241
Limerick—Frazier House, (East Austin MRA) 810 E. 13th St., Austin, 05000238
Limerick—Frazier House, (East Austin MRA) 810 E. 13th St., Austin, 05000239
Simms House, 906 Mariposa Dr., Austin, 05000242

WASHINGTON

Spokane County

Robinwood Apartments, 209–223 West Ninth Ave., Spokane, 05000248

Whitman County

Holy Trinity Episcopal Church, 105 E. Alder St., Palouse, 05000249

WISCONSIN

Milwaukee County

Wisconsin Leather Company Building, 320 E. Clybourn St., Milwaukee, 05000250

[FR Doc. 05–4640 Filed 3–9–05; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before February 12, 2005. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye

St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by March 25, 2005.

Carol D. Shull,

Keeper of the National Register of Historic Places.

GEORGIA

Carroll County

Williams Family Farm, 55 Goldworth Rd., Villa Rica, 05000193

INDIANA

Jackson County

Bell Ford Post Patented Diagonal ''Combination Bridge'', IN 258 1.5 mi. W of IN 258 and Community Dr., Seymour, 05000194

Marion County

Hotel Barton, 501–509 N. Delaware St., Indianapolis, 05000197

Monroe County

Vinegar Hill Historic District, E. 1st St. from Woodlawn to Jordan and S. Sheridan to E. Maxwell, Bloomington, 05000195

Pike County

Patoka Bridges Historic District, Address Restricted, Oakland City, 05000198

Vanderburgh County

Sweeton, Charles, House, 8700 Old State Rd., Evansville, 05000196

IOWA

Scott County

United States Post Office and Court House, 131 E. 4th St., Davenport, 05000192

KANSAS

Anderson County

Kirk, Sennett and Bertha, House, 145 W. Fourth Ave., Garnett, 05000199

Bourbon County

First Congregational Church, 502 S. National Ave., Fort Scott, 05000200

Dickinson County

Versteeg—Swisher House, 506 S. Campbell, Abilene, 05000201

Shawnee County

Alt, Solomon A., House, 1335 SW College Ave., Topeka, 05000202

MISSOURI

Pike County

City Market, 125 S. Main St., Louisiana, 05000203

NEVADA

Pershing County

Dave Canyon, Se'aquada, Table Mountain, Address Restricted, Lovelock, 05000207

NEW MEXICO

Lincoln County

Paden's Drug Store, 1200–1208 E Ave., Carrizozo, 05000204

NEW YORK

Kings County

Pratt Institute Historic District, Roughly bounded by Hall St., Dekalb Ave., Willoughby St., and Emerson Pl., Brooklyn, 05000208

PENNSYLVANIA

Wayne County

O'Connor, J.S., American Rich Cut Glassware Factory, 120 Falls Ave., Hawley, 05000206

TENNESSEE

Putnam County

Cowen Farmstead, (Historic Family Farms in Middle Tennessee MPS) 2671 Little Indian Creek Rd., Buffalo Valley, 05000205

A request for REMOVAL has been made for the following resource:

INDIANA

St. Joseph County

Tivoli Theater 208 N. Main St., Mishawaka, 98000304

[FR Doc. 05–4641 Filed 3–9–05; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Quarterly Status Report of Water Service, Repayment, and Other Water-Related Contract Negotiations

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of contractual actions that have been proposed to the Bureau of Reclamation (Reclamation) and were pending through December 31, 2004, and contract actions that have been completed or discontinued since the last publication of this notice on October 4, 2004. From the date of this publication, future quarterly notices during this calendar year will be limited to new, modified, discontinued, or completed contract actions. This annual notice should be used as a point of reference to identify changes in future notices. This notice is one of a variety of means used to inform the public about proposed contractual actions for capital recovery and management of project resources and facilities consistent with section 9(f) of the Reclamation Project Act of 1939. Additional announcements of individual contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Sandra L. Simons, Manager, Contract Services Office, Bureau of Reclamation, PO Box 25007, Denver, Colorado 80225–0007; telephone 303–445–2902.

SUPPLEMENTARY INFORMATION: Consistent with section 9(f) of the Reclamation Project Act of 1939 and the rules and regulations published in 52 FR 11954, April 13, 1987 (43 CFR 426.22), Reclamation will publish notice of proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act. Pursuant to the ''Final Revised Public Participation Procedures'' for water resource-related contract negotiations, published in 47 FR 7763, February 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the

appropriate regional or project office of Reclamation.

3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act, as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to (i) the significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. At a minimum, the regional director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Definitions of Abbreviations Used in This Document

BCP Boulder Canyon Project
Reclamation Bureau of Reclamation
CAP Central Arizona Project
CVP Central Valley Project
CRSP Colorado River Storage Project
FR Federal Register
IDD Irrigation and Drainage District
ID Irrigation District
M&I Municipal and Industrial
NMISC New Mexico Interstate Stream Commission
O&M Operation and Maintenance
P-SMBP Pick-Sloan Missouri Basin Program
PPR Present Perfected Right
SOD Safety of Dams
WD Water District

Pacific Northwest Region: Bureau of Reclamation, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706–1234, telephone 208–378–5344.

1. Irrigation, M&I, and Miscellaneous Water Users; Idaho, Oregon, Washington, Montana, and Wyoming: Temporary or interim water service contracts for irrigation, M&I, or miscellaneous use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. Rogue River Basin Water Users, Rogue River Basin Project, Oregon: Water service contracts; $8 per acre-foot per annum.

3. Willamette Basin Water Users, Willamette Basin Project, Oregon: Water service contracts; $8 per acre-foot per annum.

4. Pioneer Ditch Company, Boise Project, Idaho; Clark and Edwards Canal and Irrigation Company, Enterprise Canal Company, Ltd., Lenroot Canal Company, Liberty Park Canal Company, Poplar ID, all in the Minidoka Project, Idaho; Juniper Flat District Improvement Company, Wapinitia Project, Oregon: Amendatory repayment and water service contracts; purpose is to conform to the RRA.

5. Palmer Creek Water District Improvement Company, Willamette Basin Project, Oregon: Irrigation water service contract for approximately 13,000 acre-feet.

6. North Unit ID, Deschutes Project, Oregon: Warren Act contract with cost of service charge to allow for use of project facilities to convey nonproject water.

7. Trendwest Resorts, Yakima Project, Washington: Long-term water exchange contract for assignment of Teanaway River and Big Creek water rights to Reclamation for instream flow use in exchange for annual use of up to 3,500 acre-feet of water from Cle Elum Reservoir for a proposed resort development.

8. City of Cle Elum, Yakima Project, Washington: Contract for up to 2,170 acre-feet of water for municipal use.

9. Burley ID, Minidoka Project, Idaho-Wyoming: Supplemental and amendatory contract providing for the transfer of O&M of the headworks of the Main South Side Canal and works incidental thereto.

10. Minidoka ID, Minidoka Project, Idaho-Wyoming: Supplemental and amendatory contract providing for the transfer of O&M of the headworks of the Main North Side Canal and works incidental thereto.

11. Queener Irrigation Improvement District, Willamette Basin Project, Oregon: Renewal of long-term water service contract to provide up to 2,150 acre-feet of stored water from the Willamette Basin Project (a Corps of Engineers' project) for the purpose of irrigation within the district's service area.

12. Vale and Warmsprings IDs, Vale Project, Oregon: Repayment contract for reimbursable cost of SOD modifications to Warm Springs Dam.

13. West Extension ID, Umatilla Project, Oregon: Contract for long-term boundary expansion to include lands outside of federally recognized district boundaries.

14. Greenberry ID, Willamette Basin Project, Oregon: Irrigation water service contract for approximately 7,500 acre-feet of project water.

15. Twenty-three irrigation districts of the Arrowrock Division, Boise Project, Idaho: Repayment agreements with districts with spaceholder contracts for repayment, per legislation, of reimbursable share of costs to rehabilitate Arrowrock Dam Outlet Gates under the O&M program.

16. Eighteen irrigation water user entities, Boise Project, Idaho: Long-term renewal and/or conversion of 19 irrigation water service contracts for supplemental irrigation use of up to 71,018 acre-feet of storage space in Lucky Peak Reservoir, a Corps of Engineers' project on the Boise River, Idaho.

The following action has been completed since the last publication of this notice on October 4, 2004:

1. (16) Westland ID, Umatilla Project, Oregon: Contract for long-term boundary expansion to include lands outside of federally recognized district boundaries. Contract executed on September 14, 2004.

Mid-Pacific Region: Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone 916–978–5250.

1. Irrigation water districts, individual irrigators, M&I and miscellaneous water users, Mid-Pacific Region projects other than CVP: Temporary (interim) water service contracts for available project water for irrigation, M&I, or fish and wildlife purposes providing up to 10,000 acre-feet of water annually for terms up to 5 years; temporary Warren Act contracts for use of project facilities for terms up to 1 year; temporary conveyance agreements with the State of California for various purposes; long-term contracts for similar service for up to 1,000 acre-feet annually. **Note:** Upon written request, copies of the standard forms of temporary water service contracts for the various types of service are available from the Regional Director at the address shown above.

2. Contractors from the American River Division, Cross Valley Canal, Delta Division, Friant Division, Sacramento River Division, San Felipe

Division, Shasta Division, Trinity River Division, and West San Joaquin Division; CVP; California: Renewal of up to 114 long-term water service contracts; water quantities for these contracts total in excess of 3.4M acre-feet. These contract actions will be accomplished through long-term renewal contracts pursuant to Pub. L. 102–575. Prior to completion of negotiation of long-term renewal contracts, existing interim renewal water service contracts may be renewed through successive interim renewal of contracts.

3. Redwood Valley County WD, SRPA, California: Restructuring the repayment schedule pursuant to Pub. L. 100–516.

4. El Dorado County Water Agency, CVP, California: M&I water service contract to supplement existing water supply: 15,000 acre-feet for El Dorado County Water Agency authorized by Pub. L. 101–514.

5. Sutter Extension WD, Delano-Earlimart ID, and the State of California Department of Water Resources; CVP; California: Pursuant to Pub. L. 102–575, cooperative agreements with non-Federal entities for the purpose of providing funding for CVP refuge water wheeling facility improvements to provide water for refuge and private wetlands.

6. CVP Service Area, California: Temporary water purchase agreements for acquisition of 20,000 to 200,000 acre-feet of water for fish and wildlife purposes as authorized by the Central Valley Project Improvement Act for terms of up to 3 years.

7. City of Roseville, CVP, California: Execution of long-term Warren Act contract for conveyance of nonproject water provided from the Placer County Water Agency. This contract will allow CVP facilities to be used to deliver nonproject water to the City of Roseville for use within its service area.

8. Sacramento Municipal Utility District, CVP, California: Amendment of existing water service contract to allow for additional points of diversion and assignment of up to 30,000 acre-feet of project water to the Sacramento County Water Agency. The amended contract will conform to current Reclamation law.

9. El Dorado ID, CVP, California: Execution of long-term Warren Act contracts for conveyance of nonproject water (one contract for ditch rights in the amount of 3,344 acre-feet, and one contract for Project 184 in the amount of 11,000 acre-feet). The contracts will allow CVP facilities to be used to deliver nonproject water to El Dorado ID for use within its service area.

10. Horsefly, Klamath, Langell Valley, and Tulelake IDs; Klamath Project; Oregon: Repayment contracts for SOD work on Clear Lake Dam. These districts will share in repayment of costs, and each district will have a separate contract. Initial contract should be ready by April 2005.

11. Casitas Municipal WD, Ventura Project, California: Repayment contract for SOD work on Casitas Dam.

12. Warren Act Contracts, CVP, California: Execution of long-term Warren Act contracts (up to 25 years) with various entities for conveyance of nonproject water in the Delta-Mendota Canal and the Friant Division facilities.

13. Tuolumne Utilities District (formerly Tuolumne Regional WD), CVP, California: Long-term water service contract for up to 9,000 acre-feet from New Melones Reservoir, and possibly long-term contract for storage of nonproject water in New Melones Reservoir.

14. Banta Carbona ID, CVP, California: Long-term Warren Act contract for conveyance of nonproject water in the Delta-Mendota Canal.

15. Plain View WD, CVP, California: Long-term Warren Act contract for conveyance of nonproject water in the Delta-Mendota Canal.

16. Byron-Bethany ID, CVP, California: Long-term Warren Act contract for conveyance of nonproject water in the Delta-Mendota Canal.

17. Sacramento Area Flood Control Agency, CVP, California: Execution of a long-term operations agreement for flood control operations of Folsom Dam and Reservoir to allow for recovery of costs associated with operating a variable flood control pool of 400,000 to 670,000 acre-feet of water during the flood control season. This agreement is to conform to Federal law.

18. Colusa County WD, CVP, California: Proposed long-term Warren Act contract for conveyance of up to 4,500 acre-feet of ground water through the Tehama-Colusa Canal.

19. Madera-Chowchilla Water and Power Authority, CVP, California: Agreement to transfer the operation, maintenance, and replacement and certain financial and administrative activities related to the Madera Canal and associated works.

20. Carpinteria WD, Cachuma Project, California: Contract to transfer title of distribution system to the district. Title transfer authorized by Pub. L. 108–315, ''Carpinteria and Montecito Water Distribution Conveyance Act of 2004.''

21. Montecito WD, Cachuma Project, California: Contract to transfer title of distribution system to the district. Title transfer authorized by Pub. L. 108–315, ''Carpinteria and Montecito Water Distribution Conveyance Act of 2004.''

22. City of Vallejo, Solano Project, California: Execution of long-term Warren Act contract for conveyance of nonproject water. This contract will allow Solano Project facilities to be used to deliver nonproject water to the City of Vallejo for use within its service area.

23. Sacramento Suburban WD, CVP, California: Execution of long-term Warren Act contract for conveyance of nonproject water. This contract will allow CVP facilities to be used to deliver nonproject water to the Sacramento Suburban WD for use within its service area.

24. Truckee Meadows Water Authority, Town of Fernley, State of California, City of Reno, City of Sparks, Washoe County, State of Nevada, Truckee-Carson ID, and any other local interest or Native American Tribal interest, who may have negotiated rights under Pub. L. 101–618; Nevada and California: Contract for the storage of non-Federal water in Truckee River reservoirs as authorized by Pub. L. 101–618 and the Preliminary Settlement Agreement. The contracts shall be consistent with the Truckee River Water Quality Settlement Agreement and the terms and conditions of the proposed Truckee River Operating Agreement.

25. Sacramento River Settlement Contracts, CVP, California: Up to 145 contracts and one contract with Colusa Drain Mutual Water Company will be renewed; water quantities for these contracts total 2.2M acre-feet. These contracts will be renewed for a period of 40 years. The contracts will reflect an agreement to settle the dispute over water rights' claims on the Sacramento River and the Colusa Basin Drain.

26. San Joaquin Valley National Cemetery, U.S. Department of Veteran Affairs; Delta Division, CVP; California: Renewal of the long-term water service contract for up to 850 acre-feet with conveyance through the California State Aqueduct pursuant to the CVP-State Water Project wheeling agreement.

27. A Canal Fish Screens, Klamath Project, Oregon: Negotiation of an O&M contract for the A Canal Fish Screen with Klamath ID.

28. Ady Canal Headgates, Klamath Project, Oregon: Transfer of operational control to Klamath Drainage District of the headgates located at the railroad. Reclamation does not own the land at the headgates, only operational control pursuant to a railroad agreement.

29. Pajaro Valley Water Management Agency, CVP, California: Proposed assignment of 27,000 acre-feet of Broadview WD's entire CVP supply to

Pajaro Valley Water Management Agency for M&I use.

30. Orland Unit Water Users Association, Orland Project, California: Repayment contract for the SOD costs assigned to the irrigation purposes of Stony Gorge Dam.

31. Delta Lands Reclamation District No. 770, CVP, California: Long-term operations contract for conveying nonproject flood flows.

32. Widren WD, CVP, California: Proposed assignment of up to 2,990 acre-feet of Widren WD's CVP water to Westlands WD for irrigation use.

33. Pershing County Water Conservation District, Pershing County, Lander County, and the State of Nevada; Humboldt Project; Nevada: Title transfer to lands and features of Humboldt Project.

34. Plain View WD, CVP, California: Reorganization and proposed full contract assignment of Plain View WD's CVP supply to Byron-Bethany ID.

35. PacifiCorp, Klamath Basin Area Office, Klamath Project, Oregon: Execution of long-term agreement for lease of power privilege and the O&M of Link River Dam. This agreement will provide for operations of Link River Dam, coordinated operations with the non-Federal Keno Dam, and provision of power by PacifiCorp for Klamath Project purposes to ensure project water deliveries to meet Endangered Species Act requirements.

36. Cachuma Operation and Maintenance Board, Cachuma Project, California: Repayment of SOD work on Lauro Dam.

The following action has been completed since the last publication of this notice on October 4, 2004:

1. (37) Centinella WD, CVP, California: Proposed assignment of up to 2,500 acre-feet of Centinella WD's CVP water to Westlands WD for irrigation use. Assignment executed on November 9, 2004.

Lower Colorado Region: Bureau of Reclamation, PO Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006–1470, telephone 702–293–8536.

1. Milton and Jean Phillips, BCP, Arizona: Colorado River water delivery contract for 60 acre-feet of Colorado River water per year as recommended by the Arizona Department of Water Resources.

2. John J. Peach, BCP, Arizona: Colorado River water delivery contract for 456 acre-feet of Colorado River water per year as recommended by the Arizona Department of Water Resources.

3. GOBO Farms, BCP, Arizona: Colorado River water delivery contract for 924 acre-feet of Colorado River water per year as recommended by the Arizona Department of Water Resources.

4. Brooke Water Co., BCP, Arizona: Amend contract for an additional 120 acre-feet per year of Colorado River water for domestic uses, as recommended by the Arizona Department of Water Resources.

5. Miscellaneous PPR No. 11, BCP, Arizona: Assign a portion of the PPR from Holpal to McNulty *et al.*, and assign a portion of the PPR from Holpal to Hoover.

6. Beattie Farms SW, BCP, Arizona: Contract for 1,110 acre-feet per year of fourth priority water for agricultural purposes.

7. Maricopa-Stanfield IDD, CAP, Arizona: Amend distribution system repayment contract No. 4–07–30–W0047 to reschedule repayment pursuant to June 28, 1996, agreement.

8. Indian and non-Indian agricultural and M&I water users, CAP, Arizona: New and amendatory contracts for repayment of Federal expenditures for construction of distribution systems.

9. San Tan ID, CAP, Arizona: Amend distribution system repayment contract No. 6–07–30–W0120 to increase the repayment obligation by approximately $168,000.

10. Central Arizona IDD, CAP, Arizona: Amend distribution system repayment contract No. 4–07–30–W0048 to modify repayment terms pursuant to final order issued by U.S. Bankruptcy Court, District of Arizona.

11. Coachella Valley WD and/or The Metropolitan WD of Southern California, BCP, California: Contract to fund the Department of the Interior's expenses to conserve seepage water from the Coachella Branch of the All-American Canal in accordance with Title II of the San Luis Rey Indian Water Rights Settlement Act, dated November 17, 1988.

12. Salt River Pima-Maricopa Indian Community, CAP, Arizona: O&M contract for its CAP water distribution system.

13. Miscellaneous PPR No. 38, BCP, California: Assign Schroeder's portion of the PPR to Murphy Broadcasting.

14. Berneil Water Co., CAP, Arizona: Partial assignment of 200 acre-feet of water per year to the Cave Creek Water Company.

15. Canyon Forest Village II Corporation, BCP, Arizona: Colorado River water delivery contract for up to 400 acre-feet per year of unused Arizona apportionment or surplus apportionment for domestic use.

16. Gila Project Works, Gila Project, Arizona: Title transfer of facilities and certain lands in the Wellton-Mohawk Division from the United States to the Wellton-Mohawk IDD.

17. Gila River Indian Community, CAP, Arizona: Amend CAP water delivery contract and distribution system repayment and operation, maintenance, and replacement, contract pursuant to the Arizona Water Settlements Act, Pub. L. 108–451, enacted December 10, 2004.

18. North Gila Valley IDD, Yuma ID, and Yuma Mesa IDD; Yuma Mesa Division, Gila Project; Arizona: Administrative action to amend each district's Colorado River water delivery contract to effectuate a change from a ''pooled'' water entitlement for the Division to a quantified entitlement for each district.

19. Indian and/or non-Indian M&I users, CAP, Arizona: New or amendatory water service contracts or subcontracts in accordance with an anticipated final record of decision for reallocation of CAP water, as discussed in the Secretary of the Interior's notice published on page 41456 of the FR on July 30, 1999.

20. Litchfield Park Service Company, CAP, Arizona: Proposed partial assignments of subcontract for 5,590 acre-feet of CAP M&I water to the Central Arizona Water Conservation District, which is exercising its authority as the Central Arizona Groundwater Replenishment District, and to the cities of Avondale, Carefree, and Goodyear.

21. Shepard Water Company, Inc., BCP, Arizona: Contract for the annual delivery of 50 acre-feet of fourth priority water per year for domestic use.

22. Jessen Family Limited Partnership, BCP, Arizona: Contract for delivery of 1,080 acre-feet of Colorado River water for agricultural purposes.

23. City of Somerton, BCP, Arizona: Contract for the annual delivery of up to 750 acre-feet of Colorado River water per year for domestic use as recommended by the Arizona Department of Water Resources.

24. Various Irrigation Districts, CAP, Arizona: Amend distribution system repayment contracts to provide for partial assumption of debt by the Central Arizona Water Conservation District and the United States upon enactment of Federal legislation providing for resolution of CAP issues.

25. Mohave County Water Authority, BCP, Arizona: Amendatory Colorado River water delivery contract to include the delivery of 3,500 acre-feet per year of fourth priority water and to delete the delivery of 3,500 acre-feet per year of fifth or sixth priority water.

26. All-American Canal, BCP, California: Agreement among

Reclamation, Imperial ID, Metropolitan WD, and Coachella Valley WD for the federally funded construction of a reservoir(s) and associated facilities that will improve the regulation and management of Colorado River water (Federal legislation pending).

27. Tohono O'odham Nation, CAP, Arizona: Amend CAP water delivery contract pursuant to the Arizona Water Settlements Act, Pub. L. 108–451, enacted December 10, 2004.

28. Sunrise Water Company, CAP, Arizona: Proposed assignment of subcontract for 944 acre-feet of CAP M&I water per year to the Central Arizona Water Conservation District, which is exercising its authority as the Central Arizona Groundwater Replenishment District.

29. West End Water Company, CAP, Arizona: Proposed assignment of subcontract for 157 acre-feet of CAP M&I water per year to the Central Arizona Water Conservation District, which is exercising its authority as the Central Arizona Groundwater Replenishment District.

30. New River Utilities Company, CAP, Arizona: Proposed assignment of subcontract for 1,885 acre-feet of CAP M&I water to the Central Arizona Water Conservation District, which is exercising its authority as the Central Arizona Groundwater Replenishment District.

31. Cibola Valley IDD, BCP, Arizona: Contingent upon completion of sale documents, proposed assignment and transfer of a portion of the district's right to divert up to 24,120 acre-feet of Colorado River per year to the Mohave County Water Authority, the Hopi Tribe, and Reclamation.

32. Metropolitan WD and others, BCP, Arizona and California: Contract to provide for the recovery by Metropolitan WD of interstate underground storage credits previously placed in underground storage in Arizona by the Central Arizona Water Conservation District under agreements executed in 1992 and 1994, and to document the Arizona Water Banking Authority's responsibility in agreeing to Arizona's forbearance in the use of Colorado River water to permit the Secretary of the Interior to release that quantity of water for diversion and use by the Metropolitan WD.

33. Wellton-Mohawk IDD, BCP, Arizona: Amend contract No. 1–07–30–W0021 to revise the authority to deliver domestic use water from 5,000 to 10,000 acre-feet per calendar year, which is within the district's current overall Colorado River water entitlement.

34. Fisher's Landing Water and Sewer Works, LLC, BCP Arizona: Contract for 53 acre-feet annually of Colorado River water to be used to account for domestic water use on residential properties located within the Castle Dome area of Martinez Lake.

35. Yuma County Water Users Association, BCP, Arizona: Supplemental contract for the O&M of the Yuma Project, Valley Division.

36. Forbearance agreements, BCP, Arizona and California: Develop and execute short-term agreements to implement a demonstration forbearance program to evaluate the feasibility of acquiring water, through a voluntary land fallowing program, to replace drainage water currently being bypassed to the Cienega de Santa Clara.

37. Miscellaneous PPR No. 43, BCP, California: Contract with the City of Needles, for 1,500 acre-feet diversion and 950 acre-feet consumptive use.

38. Arizona Water Settlements Act, CAP, Arizona: Implementation of the contracting requirements of Title I—Central Arizona Project Settlement, Title II—Gila River Indian Community Water Rights Settlement, Title III—Southern Arizona Water Rights Settlement, and Title IV—San Carlos Apache Tribe Water Rights Settlement.

39. Southern Nevada Water Authority, Colorado River Commission of Nevada, and the Metropolitan WD of Southern California; BCP; California and Nevada: A storage and interstate release agreement establishing a procedure that the Secretary of the Interior will follow to achieve an interstate contractual distribution of Colorado River water.

The following action has been discontinued since the last publication of this notice on October 4, 2004:

1. (33) Central Arizona Water Conservation District and the Arizona Department of Water Resources, CAP, Arizona: Arizona Water Settlement Agreement to address outstanding CAP water allocation issues, subject to completion of final record of decision for reallocation of CAP water as discussed in the Secretary of the Interior's notice published in the FR on July 30, 1999 (64 Fed. Reg. 41456).

The following actions have been completed since the last publication of this notice on October 4, 2004:

1. (11) Imperial ID/Coachella Valley WD and/or The Metropolitan WD of Southern California, BCP, California: Contract to fund the Department of the Interior's expenses to conserve All-American Canal seepage water in accordance with Title II of the San Luis Rey Indian Water Rights Settlement Act, dated November 17, 1988.

2. (14) Arizona State Land Department, BCP, Arizona: Colorado River water delivery contract for 1,534 acre-feet per year for domestic use.

3. (19) ASARCO Inc., CAP, Arizona: Amendment of subcontract to extend the deadline for giving notice of termination on exchange.

4. (48) Mr. and Mrs. West, BCP, California: Assignment of contract No. 6–07–30–W0342 from Mr. and Mrs. West to Ronald E. and Shannon L. Williamson.

Upper Colorado Region: Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102, telephone 801–524–3864.

1. Individual irrigators, M&I, and miscellaneous water users; Initial Units, CRSP; Utah, Wyoming, Colorado, and New Mexico: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10, 000 acre-feet of water annually for terms up to 10 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

(a) Ron Connell, Aspinall Storage Unit, CRSP: Mr. Connell has requested a 40-year water service contract for 6 acre-feet of water out of Blue Mesa Reservoir. Mr. Connell has submitted an augmentation plan to Water District 4, Case No. 04CW168.

(b) Oxbow Mining, LLC, Aspinall Storage Unit, CRSP: Oxbow Mining, LLC has requested 242 acre-feet of M&I water out of the Blue Mesa reservoir, which requires that an augmentation plan be presented to the Division 4 Water Court.

2. Taos Area, San Juan-Chama Project, New Mexico: The United States is reserving 2,990 acre-feet of project water for potential use in an Indian water rights settlement in the Taos, New Mexico area.

3. Various Contactors, San Juan-Chama Project, New Mexico: The United States proposes to lease water from various contractors to stabilize flows in a critical reach of the Rio Grande in order to meet the needs of irrigators and preserve habitat for the silvery minnow.

4. Uncompahgre Valley Water Users Association, Upper Gunnison River Water Conservancy District, and the Colorado River Water Conservation District; Uncompahgre Project; Colorado: Water management agreement for water stored at Taylor Park Reservoir and the Wayne N. Aspinall Storage Units to improve water management.

5. Southern Ute Indian Tribe, Florida Project, Colorado: Supplement to contract No. 14–06–400–3038, dated May 7, 1963, for an additional 181 acre-feet of project water, plus 563 acre-feet of project water pursuant to the 1986

Colorado Ute Indian Water Rights Final Settlement Agreement.

6. Sanpete County Water Conservancy District, Narrows Project, Utah: Application for a SRPA loan and grant to construct a dam, reservoir, and pipeline to annually supply approximately 5,000 acre-feet of water through a transmountain diversion from upper Gooseberry Creek in the Price River drainage (Colorado River Basin) to the San Pitch—Savor River (Great Basin).

7. Individual Irrigators, Carlsbad Project, New Mexico: The United States proposes to enter into long-term forbearance lease agreements with individuals who have privately held water rights to divert nonproject water either directly from the Pecos River or from shallow/artesian wells in the Pecos River Watershed. This action will result in additional water in the Pecos River to make up for the water depletions caused by changes in operations at Summer Dam which were made to improve conditions for a threatened species, the Pecos bluntnose shiner.

8. La Plata Conservancy District, Animas-La Plata Project, Colorado and New Mexico: Cost sharing/repayment contract for up to 1,560 acre-feet per year of M&I water; contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000 (Title III of Pub. L. 106–554).

9. LeChee Chapter of the Navajo Nation, Glen Canyon Unit, CRSP, Arizona: Long-term contract for 950 acre-feet of water for municipal purposes.

10. Pine River ID, Pine River Project, Colorado: Contract to allow the district to convert up to approximately 10,000 acre-feet of project irrigation water to municipal, domestic, and industrial uses.

11. City of Page, Glen Canyon Unit, CRSP, Arizona: Long-term contract for 1,000 acre-feet of water for municipal purposes.

12. El Paso County Water Improvement District No. 1 and Isleta del Sur Pueblo, Rio Grande Project, Texas: Contract to convert up to 1,000 acre-feet of the Pueblo's project irrigation water to use for traditional and religious purposes.

13. Carlsbad ID and the NMISC, Carlsbad Project, New Mexico: Contract to convert irrigation water appurtenant to up to 6,000 acres of land within the project for use by the NMISC for delivery to Texas to meet New Mexico's Pecos River Compact obligation.

14. Animas-La Plata Water Conservancy District, Animas-La Plata Project, Colorado and New Mexico: Contract to transfer the operation, maintenance, and replacement responsibilities of most project facilities to the district, pursuant to Section 6 of the Reclamation Act of June 17, 1902, and other Reclamation laws.

15. Project Operations Committee, Animas-La Plata Project, Colorado and New Mexico: Agreement among the United States, the Southern Ute Indian Tribe, the Ute Mountain Ute Tribe, the Navajo Nation, the San Juan Water Commission, the Animas-La Plata Water Conservancy District, the State of Colorado, and the La Plata Conservancy District of New Mexico to coordinate and oversee the necessary operation, maintenance, and replacement activities of the project works.

16. Southern Ute Indian Tribe, Animas-La Plata Project, Colorado and New Mexico: Water delivery contract for 33,519 acre-feet of M&I water; contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000 (Title III of Pub. L. 106–554).

17. Ute Mountain Ute Tribe, Animas-La Plata Project, Colorado and New Mexico: Water delivery contract for 33,519 acre-feet of M&I water; contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000 (Title III of Pub. L. 106–554).

18. Navajo Nation, Animas-La Plata Project, Colorado and New Mexico: Water delivery contract for 4,680 acre-feet of M&I water; contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000 (Title III of Pub. L. 106–554).

19. Various contractors including the Town of Mancos and the Mancos Rural Water Company, Mancos Project, Colorado: Small or short-term contracts to carry nonproject water through project facilities for municipal purposes under authority of Pub. L. 106–549.

20. State of Colorado, Animas-La Plata Project, Colorado and New Mexico: Cost sharing/repayment contract for up to 10,440 acre-feet per year of M&I water; contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000 (Title III of Pub. L. 106–554).

21. Coon Creek Reservoir and Ditch Company, Collbran Project: The Coon Creek Reservoir and Ditch Company and the Collbran Conservancy District have requested a nonproject irrigation carriage contract (40-year) to have 3 cfs, not to exceed 1,000 acre-feet annually, of their direct flow irrigation water rights diverted into and delivered through the existing Southside Canal, a feature of Collbran Project delivery structures.

22. Central Utah Water Conservancy District, Bonneville Unit, Central Utah Project, Utah: Negotiate a repayment contract for 60,000 acre-feet per year of M&I water from the Utah Lake System.

23. Carlsbad ID and the NMISC, Carlsbad Project, New Mexico: Contract for storage and delivery of water produced by the NMISC's River Augmentation Program, among Reclamation, Carlsbad ID, and the NMISC. This will allow for storage of NMISC water in project facilities resulting in additional project water supply.

24. Town of Palisade, Palisade ID, Mesa County ID, Reclamation, and the U.S. Fish and Wildlife Service; CRSP: The Colorado River is critical habitat for four endangered fish species. These agencies are entering into an agreement for each to provide the following: Reclamation shall provide cost-share funding for the recovery monitoring and research, and O&M (October 30, 2000, 114 Stat. 1602, Pub. L. 106–392); the districts are willing to allow the U.S. Fish and Wildlife Service and Reclamation to construct the fish passage; and the Town of Palisade proposes to provide related safety features on or near the fish passage.

25. Public Service Company of New Mexico, Reclamation, and the U.S. Fish and Wildlife Service; San Juan River Basin Recovery Implementation Program: The agreement identifies that Reclamation may provide cost-share funding for the recovery monitoring and research, and O&M (October 30, 2000, 114 Stat. 1602, Pub. L. 106–392) of the constructed fish passage.

26. Reclamation, U.S. Fish and Wildlife Service, and the Colorado River Water Conservation District; Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River Basin: Reclamation will provide cost-share funding for enlargement of Elkhead Reservoir (October 30, 2000, 114 Stat. 1602, Pub. L. 106–392) in a separate grant agreement.

27. The Grand Valley Water Users Association and U.S. Fish and Wildlife Service: Construction and O&M of a fish passage and fish screen facilities at the Grand Valley Diversion Dam and Government Highline Canal facilities to facilitate recovery of endangered fish species in the Colorado River Basin (October 30, 2000, 114 Stat. 1602, Pub. L. 106–392).

28. Mancos Rural Water Company, Mancos Project, Colorado: Contract to allow the Mancos Rural Water Company to convert an additional 300 acre-feet of project irrigation water to municipal, domestic, and industrial uses.

The following action has been discontinued since the last publication of this notice on October 4, 2004:

1. (1)(g) United Companies, Aspinall Storage Unit, CRSP: United Companies has requested 7 acre-feet of M&I water out of Blue Mesa Reservoir for the Delta No. 1 Gravel Pit.

The following actions have been completed since the last publication of this notice on October 4, 2004:

1. (1)(e) Thomas Chapman, Aspinall Storage Unit, CRSP: Mr. Chapman has requested a 40-year water service contract for 1 acre-foot of water out of Blue Mesa Reservoir to support his pending plan of augmentation, Water Division 4. Contract executed on November 2, 2004.

2. (1)(h) Mountain View Amish-Mennonite Church, Aspinall Storage Unit, CRSP: The Church has requested 1 acre-foot of M&I water out of Blue Mesa Reservoir, Water Division 4, case No. 04CW106. Contract executed on September 29, 2004.

3. (28) U.S. Fish and Wildlife Service, San Juan River Basin Recovery Implementation Program, Aspinall Storage Unit, CRSP: The U.S. Fish and Wildlife Service has requested 14 acre-feet of water out of Blue Mesa Reservoir to be used at the Chipeta Unit ponds at the Hotchkiss National Fish Hatchery. The ponds are to be used to grow out the two San Juan River Basin endangered fish species. Contract executed on September 15, 2004.

Great Plains Region: Bureau of Reclamation, PO Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59107–6900, telephone 406–247–7752.

1. Individual irrigators, M&I, and miscellaneous water users, Colorado, Kansas, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming: Temporary (interim) water service contracts for the sale, conveyance, storage, and exchange of surplus project water and nonproject water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for a term of up to 1 year.

2. Green Mountain Reservoir, Colorado-Big Thompson Project, Colorado: Water service contracts for irrigation and M&I contracts for sale of water from the marketable yield to water users within the Colorado River Basin of western Colorado.

3. Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado: Second round water sales from the regulatory capacity of Ruedi Reservoir. Water service and repayment contracts for up to 17,000 acre-feet annually for M&I use.

4. Garrison Diversion Unit, P–SMBP, North Dakota: Renegotiation of the master repayment contract with Garrison Diversion Conservancy District to conform with the Dakota Water Resources Act of 2000; negotiation of repayment contracts with irrigators and M&I users.

5. City of Rapid City, Rapid Valley Unit, P–SMBP, South Dakota: Contract renewal for storage capacity in Pactola Reservoir. A temporary (1 year not to exceed 10,000 acre-feet) water service contract has been executed with the City of Rapid City, Rapid Valley Unit, for use of water from Pactola Reservoir. A long-term storage contract is being negotiated for water stored in Pactola Reservoir. Legislation is pending for change in the authorized use of Pactola storage.

6. Mid-Dakota Rural Water System, Inc., South Dakota: Pursuant to the Reclamation Projects Authorization and Adjustment Act of 1992, the Secretary of the Interior is authorized to make grants and loans to Mid-Dakota Rural Water System, Inc., a non-profit corporation, for the planning and construction of a rural water supply system.

7. City of Berthoud, Colorado-Big Thompson Project, Colorado: Long-term contract for conveyance of nonproject M&I water through Colorado-Big Thompson Project facilities.

8. City of Cheyenne, Kendrick Project, Wyoming: Negotiate a long-term contract for storage space for replacement water on a daily basis in Seminoe Reservoir. A temporary contract has been issued pending negotiation of the long-term contract.

9. Highland-Hanover ID, Hanover-Bluff Unit, P–SMBP, Wyoming: Negotiate long-term water service contract; includes provisions for repayment of construction costs.

10. Upper Bluff ID, Hanover-Bluff Unit, P–SMBP, Wyoming: Negotiate long-term water service contract; includes provisions for repayment of construction cost.

11. Fort Clark ID, P–SMBP, North Dakota: Negotiation of water service contract to continue delivery of project water to the district.

12. Western Heart River ID, Heart Butte Unit, P–SMBP, North Dakota: Negotiation of water service contract to continue delivery of project water to the district.

13. Sisk Ranch, Inc., Lower Marias Unit, P–SMBP, Montana: Initiating a long-term contract for up to 552 acre-feet of storage water from Tiber Reservoir to irrigate 276 acres. Temporary contracts have been issued to allow continued delivery of water.

14. I.J. Peterson Ranch, Inc., Lower Marias Unit, P–SMBP Montana: Initiating a long-term contract for up to 478 acre-feet of storage water from Tiber Reservoir to irrigate 239 acres. Temporary contracts have been issued to allow continued delivery of water.

15. Morkrid Enterprises, Inc., Lower Marias Unit, P–SMBP Montana: Initiating a long-term contract for up to 3,751 acre-feet of storage water from Tiber Reservoir to irrigate 1,875 acres. Temporary contracts have been issued to allow continued delivery of water.

16. Dickinson-Heart River Mutual Aid Corporation, Dickinson Unit, P–SMBP North Dakota: Negotiate renewal of water service contract for irrigation of lands below Dickinson Dam in western North Dakota.

17. Savage ID, P–SMBP Montana: The district is currently seeking title transfer. The contract is subject to renewal pending outcome of the title transfer process. A 5-year interim contract has been executed to ensure a continuous water supply.

18. City of Fort Collins, Colorado-Big Thompson Project, Colorado: Long-term contracts for conveyance and storage of nonproject M&I water through Colorado-Big Thompson Project facilities.

19. Standing Rock Sioux Tribe, P–SMBP North Dakota: Negotiate a long-term water service contract with the Standing Rock Sioux Tribe in North Dakota for irrigation of up to 2,380 acres of land within the reservation.

20. Glendo Unit, P–SMBP Wyoming: Contract renewal for long-term water service contracts with Burbank Ditch, New Grattan Ditch Company, Torrington ID, Lucerne Canal and Power Company, and Wright and Murphy Ditch Company.

21. Glendo Unit, P–SMBP Nebraska: Contract renewal for long-term water service contracts with Bridgeport, Enterprise, and Mitchell IDs, and Central Nebraska Public Power and ID.

22. Helena Valley Unit, P–SMBP Montana: Negotiating with Helena Valley ID for renewal of Part A of the A/B contract which expired December 31, 2004.

23. Crow Creek Unit, P–SMBP Montana: Negotiating with Toston ID for renewal of Part A of the A/B contract which expired December 31, 2004.

24. Dickinson Parks and Recreation District, Dickinson Unit, P–SMBP North Dakota: A temporary contract has been negotiated with the District for minor amounts of water from Dickinson Reservoir. Negotiate a long-term water service contract with the Park Board for minor amounts of water from Dickinson Dam.

25. Clark Canyon Water Supply Company, East Bench Unit, P–SMBP Montana: Initiating renewal of contract No. 14–06–600–3592 which expires December 31, 2005.

26. East Bench ID, East Bench Unit, P–SMBP Montana: Initiating renewal of

contract No. 14–06–600–3593 which expires December 31, 2005.

27. Tiber Enterprises, Inc., Lower Marias Unit, P–SMBP Montana: Initiating a long-term contract for up to 1,388 acre-feet of storage water from Tiber Reservoir to irrigate 694 acres. Temporary contracts have been issued to allow continued delivery of water.

28. Helena Valley Unit, P–SMBP, Montana: Initiating negotiations for contract renewal for an annual supply of water for domestic and M&I use to the City of Helena, Montana.

29. Canadian River Municipal Water Authority, Lake Meredith Salinity Control Project, New Mexico and Texas: Negotiation of a contract for the transfer of control (care and O&M) of the project to the Authority in accordance with Pub. L. 102–575, Title VIII, Section 804(c).

30. Fryingpan-Arkansas Project, Colorado: Consideration of excess capacity contracts in the Fryingpan-Arkansas Project.

31. Fryingpan-Arkansas Project, Colorado: Consideration of requests for long-term contracts for the use of excess capacity in the Fryingpan-Arkansas Project from the Southeastern Colorado Water Conservancy District, the City of Aurora, and the Colorado Springs Utilities.

32. Individual irrigators, Heart Butte Unit, P–SMBP, North Dakota: Renew long-term water service contracts for minor amounts of less than 1,000 acre-feet of irrigation water annually from the Heart River below Heart Butte Dam.

33. Municipal Subdistrict of the Northern Colorado Water Conservancy District, Colorado-Big Thompson Project, Colorado: Consideration of a new long-term contract or amendment of contract No. 4–07–70–W0107 with the Municipal Subdistrict and the Northern Colorado Water Conservancy District for the proposed Windy Gap Firming Project.

34. Northern Integrated Supply Project, Colorado-Big Thompson Project, Colorado: Consideration of a new long-term contract with approximately 14 regional water suppliers and the Northern Colorado Water Conservancy District for the Northern Integrated Supply Project.

35. Hill County WD, Milk River Project, Montana: Initiating renewal of municipal water supply contract No. 14–06–600–8954 which expires August 1, 2006. The proposal includes splitting the contract between Hill County WD and North Havre County WD which both receive their full water supply under the current contract.

36. Stutsman County Park Board, Jamestown Unit, P–SMBP, North Dakota: The Board is requesting a contract for minor amounts of water under a long-term contract to serve domestic needs for cabin owners at Jamestown Reservoir, North Dakota.

37. City of Huron, P–SMBP, South Dakota: Renewal of long-term operation, maintenance, and replacement agreement for O&M of the James Diversion Dam, South Dakota, with the City of Huron, South Dakota, or negotiation of water service and O&M with other interested, but as of yet, unidentified entity.

38. Garrison Diversion Unit, P–SMBP, North Dakota: Contracts to provide for project use pumping power or project use pumping power and supplemental irrigation water with various irrigation districts in North Dakota, covering a combined maximum 28,000 acres within the boundaries and limits set by the Dakota Water Resources Act of 2000.

39. Security Water and Sanitation District, Fryingpan-Arkansas Project, Colorado: Consideration of a request for a long-term contract for the use of excess capacity in the Fryingpan-Arkansas Project.

40. City of Fountain, Colorado; Fryingpan-Arkansas Project; Colorado: Consideration of a request for a long-term contract for the use of excess capacity in the Fryingpan-Arkansas Project.

41. Colorado Springs Utilities, Colorado Springs, Colorado; Colorado-Big Thompson Project; Colorado: Consideration of a request for a long-term agreement for water substitution and power interference in the Colorado-Big Thompson Project.

42. Pueblo West Metropolitan District, Pueblo West, Colorado; Fryingpan-Arkansas Project; Colorado: Consideration of a request for a 5- to 10-year contract for the use of excess capacity in the Fryingpan-Arkansas Project.

43. LeClair ID, Boysen Unit, P–SMBP, Wyoming: Contract renewal of long-term water service contract.

44. Riverton Valley ID, Boysen Unit, P–SMBP, Wyoming: Contract renewal of long-term water service contract.

The following actions have been completed since the last publication of this notice on October 4, 2004:

1. (39) Frenchman Valley ID; Frenchman Unit, Frenchman-Cambridge Division, P–SMBP; Culbertson, Nebraska: The District requested a deferment of its 2004 repayment and reserve fund obligations. A request was prepared to amend contract No. 009E6B0123 to defer payments in accordance with the Act of September 21, 1959. An amendatory contract was executed on September 23, 2004.

2. (40) Bostwick ID in Nebraska; Franklin Superior-Courtland and Courtland Units, Bostwick Division, P–SMBP; Red Cloud, Nebraska: The District requested a deferment of its 2004 repayment and water service obligations. A request was prepared to amend contract No. 009E6B0121 to defer payments in accordance with the Act of September 21, 1959. An amendatory contract was executed on September 23, 2004.

3. (41) Frenchman-Cambridge ID; Meeker-Driftwood, Red Willow, and Cambridge Units; Frenchman-Cambridge Division; P–SMBP; Cambridge, Nebraska: The District requested a deferment of its repayment obligation. A request was prepared to amend contract No. 009D6B0122 to defer payments in accordance with the Act of September 21, 1959. An amendatory contract was executed on September 23, 2004.

4. (43) East Bench ID, East Bench Unit, P–SMBP, Montana: The District requested a deferment of its 2004 distribution works repayment obligation. A request is being prepared to amend contract No. 14–06–600–3593 to defer payments in accordance with the Act of September 21, 1959. An amendatory contract was executed on September 23, 2004.

5. (46) Tom Green County Water Control and Improvement District No. 1, San Angelo Project, Texas: Public Law 108–231 dated May 28, 2004, authorized the Secretary of the Interior to extend the repayment period for the District from 40 to 50 years. A contract amendment was executed on November 1, 2004.

Dated: January 21, 2005.

Roseann Gonzales,

Director, Office of Program and Policy Services.

[FR Doc. 05–4677 Filed 3–9–05; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request renewed

authority for the collection of information for 30 CFR part 705 and the Form OSM–23, Restriction on financial interests of State employees.

DATES: Comments on the proposed information collection must be received by May 9, 2005, to the assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 202—SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtreleas@smre.gov*.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection requests, explanatory information and related forms, contact John A. Trelease, at (202) 208–2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). This notice identifies an information collection that OSM will be submitting to OMB for approval. This collection is contained in 30 CFR part 705 and the Form OSM–23, Restriction on financial interests of State employees. OSM will request a 3-year term of approval for this information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

The following information is provided for the information collection: (1) Title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

Title: Restrictions on financial interests of State employees, 30 CFR part 705.

OMB Control Number: 1029–0067.

Summary: Respondents supply information on employment and financial interests. The purpose of the collection is to ensure compliance with section 517(g) of the Surface Mining Control and Reclamation Act of 1977, which places an absolute prohibition on having a direct or indirect financial interest in underground or surface coal mining operations.

Bureau Form Number: OSM–23.

Frequency of Collection: Entrance on duty and annually.

Description of Respondents: Any State regulatory authority employee or member of advisory boards or commissions established in accordance with State law or regulation to represent multiple interests who performs any function or duty under the Surface Mining Control and Reclamation Act.

Total Annual Responses: 3,676.

Total Annual Burden Hours: 1,078.

Dated: March 4, 2005.

John R. Craynon,

Chief, Division of Regulatory Support.

[FR Doc. 05–4691 Filed 3–9–05; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–517]

In the Matter of Certain Shirts With Pucker-Free Seams and Methods of Producing Same; Notice of Commission Decision Not To Review an Initial Determination Granting Complainants' Motion To Withdraw the Complaint and To Terminate the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) issued by the presiding administrative law judge (ALJ) in the above-captioned investigation terminating the investigation on the basis of withdrawal of the complaint.

FOR FURTHER INFORMATION CONTACT: Andrea Casson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3104. Copies of all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on August 3, 2004, based on a complaint filed by TAL Apparel Limited, TALTECH Limited, and The Apparel Group Limited (collectively ''TAL'') 69 FR 47857 (August 6, 2004.) The complaint, as amended alleges violations of section 337 of the Tariff Act of 1930, 337 U.S.C. 1337, in the importation into the United States, sale for importation, and/or sale within the United States after importation of certain shirts with pucker-free seams that infringe certain claims of U.S. Patent No. 5,568,779 and U.S. Patent No. 5,590,615. The complaint names as respondents Esquel Apparel, Inc. and Esquel Enterprises Limited (collectively ''Esquel'').

On February 1, 2005, TAL filed a motion to withdraw the complaint and terminate the investigation pursuant to Commission rule 210.21(a). On February 3, 2005, Esquel and the Commission investigative attorney each filed responses to the motion indicating that they did not oppose the motion. On February 8, 2005, the ALJ issued an ID (Order No. 22) granting TAL's motion. No party filed a petition for review of the ID.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and § 210.42(h) of the Commission Rules of Practice and Procedure, 19 CFR 210.42(h).

Issued: March 4, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E5–1014 Filed 3–9–05; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Settlement Agreement Under the Park System Resources Protection Act

Under 28 CFR 50.7, notice is hereby given of a proposed settlement agreement, *In Re: Bella Vista Restaurant,* for the recovery of natural resource damages by the National Park

Service (''NPS''), under the Park system Resources Protection Act, 16 U.S.C. 19jj.

The proposed settlement resolves claims against the Bella Vista Restaurant and its owners and insurers (collectively, ''Bella Vista''). Bella Vista is located on Skyline Boulevard, in Woodside, California, adjacent to the Phleger Estate portion of Golden Gate National Recreation Area, a unit of the NPS. NPS alleges that in an ''Incident'' in approximately May of 1999, Bella Vista cut down and ''topped'' several redwood and other trees in NPS land on the Phleger Estate.

Under the proposed settlement agreement, Bella Vista will pay $195,000 for costs and damages. In exchange, the NPS covenants not to sue Bella Vista for the Incident.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed settlement agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *In Re: Bella Vista Restaurant,* DOJ Ref. # 90–5–1–1–08450.

During the public comment period, the proposed settlement agreement may be examined on the following Department of Justice Web site: *www.usdoj.gov/enrd/open.html.* A copy of the proposed settlement agreement may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood, *tonia.fleetwood@usdoj.gov,* Fax No. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $0.75 (25 cents per page reproduction cost) payable to the U.S. Treasury, to obtain a copy of the Consent Decree.

Ellen M. Mahan,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–4637 Filed 3–9–05; 8:45 am]

BILLING CODE 4410–15–M

MISSISSIPPI RIVER COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETINGS: Mississippi River Commission.

TIME AND DATE: 9 a.m., April 18, 2005.

PLACE: On board MISSISSIPPI V at City Front, New Madrid, MO.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Vicksburg District; and (3) presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 9 a.m., April 19, 2005.

PLACE: On board MISSISSIPPI V at Tunica River Park, Tunica, MS.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Memphis District; and (3) presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 9 a.m., April 20, 2005.

PLACE: On board MISSISSIPPI V at City Front, Vicksburg, MS.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Vicksburg District; and (3) presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 9 a.m., April 22, 2005.

PLACE: On board MISSISSIPPI V at New Orleans District Dock, Foot of Prytania Street, New Orleans, LA.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the New Orleans District; and (3) presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

CONTACT PERSON FOR MORE INFORMATION: Mr. Stephen Gambrell, telephone 601–634–5766.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 05–4818 Filed 3–8–05; 11:36 am]

BILLING CODE 3710–GX–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* 10 CFR Part 73—''Physical Protection of Plants and Materials.''

3. *The form number if applicable:* Not Applicable.

4. *How often the collection is required:* On occasion, with the exception of the initial submittal of revised Security Plans, Safeguards Contingency Plans, and Security Training and Qualification Plans. Required reports are submitted and evaluated as events occur.

5. *Who will be required or asked to report:* Nuclear power reactor licensees, licensed under 10 CFR Part 50 or 52 who possess, use, import, export, transport, or deliver to a carrier for transport, special nuclear material.

6. *An estimate of the number of responses:* 78,478.

7. *The estimated number of annual respondents:* 384.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 524,820 hours (50,212 reporting [0.64 hours per response] and 474,608 recordkeeping [1,236 hours per recordkeeper]).

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* NRC regulations in 10 CFR part 73 prescribe requirements for establishment and maintenance of a physical protection system with capabilities for protection of special nuclear material at fixed sites and in transit and of plants in which special nuclear material is used. The information in the reports and records is used by the NRC staff to ensure that the health and safety of the public is protected and that licensee possession and use of special nuclear material is in compliance with license and regulatory requirements.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by April 11, 2005. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

John A. Asalone, Office of Information and Regulatory Affairs (3150–0002), NEOB–10202, Office of Management and Budget, Washington DC 20503.

Comments can also be e-mailed to *JohnA.Asalone@omb.eop.gov* or submitted by telephone at (202) 395–4687.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 3rd day of March 2005.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 05–4668 Filed 3–9–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[IA–01–030]

In the Matter of Jack J. Spurling; Order Prohibiting Involvement in NRC-Licensed Activities

FirstEnergy Nuclear Operating Company (FENOC or Licensee) holds License No. NPF–58 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 50 on November 13, 1986. The license authorizes the operation of the Perry Nuclear Power Plant (Perry) in accordance with the conditions specified therein. The facility is located on the Licensee's site near Painesville, Ohio.

From November 8, 1999, to May 1, 2000, Jack J. Spurling was employed as the Site Superintendent for the Williams Power Corporation (Williams Power), a contractor of the Licensee at Perry.

The NRC Office of Investigations (OI) conducted an investigation to determine if an individual previously employed as a painter by Williams Power at Perry was laid off in violation of 10 CFR 50.7 on March 9, 2000, because the painter had participated in protected activities (OI Report No. 3–2000–025). Three painters employed by Williams Power met with a FENOC maintenance supervisor at Perry on March 8, 2000, to discuss their concerns about directions given by the Williams Power general foreman to omit steps, including preparing the surface prior to applying paint, required by a licensee painting procedure for the Perry Fuel Handling Building. As a result, the FENOC maintenance supervisor prepared a condition report on March 9, 2000. The FENOC maintenance supervisor made Mr. Spurling aware of the contents of the condition report and informed Mr. Spurling that the painters wanted to meet with the Perry Ombudsman to discuss their concerns. Mr. Spurling then arranged for the painters to meet with the Ombudsman. Subsequently, upon the painters' return to the Williams Power work area after their March 9, 2000, meeting with the Ombudsman, Mr. Spurling told the painters that they could volunteer for a layoff or be terminated. As a result, two painters volunteered for layoff and the third was forced to resign. Final payroll checks for the painters had been prepared by Mr. Spurling that morning before they met with the Ombudsman, indicating that the layoff was planned by Mr. Spurling in retaliation for the painters' contacts with the FENOC maintenance supervisor and the Perry Ombudsman.

The painters' contacts with the FENOC maintenance supervisor on March 8, 2000, and the Perry Ombudsman on March 9, 2000, to discuss their concerns about adherence to procedures by Williams Power were activities protected by 10 CFR 50.7. These protected activities were a contributing factor to the threats to the three painters to accept layoff or be terminated, to the layoff of two painters and to the constructive discharge (forced resignation) of the third painter. Therefore, a Notice of Violation was issued on this date to Williams Power Corporation (EA–082) and a Notice of Violation and Proposed Civil Penalty—$55,000 was issued on this date to the licensee (EA–01–083), both for an apparent violation of 10 CFR 50.7, ''Employee Protection.''

During its investigation, OI requested that Williams Power provide copies of the termination paychecks which Mr. Spurling had prepared for the painters. Williams Power produced two checks dated March 9, 2000, and a third check dated March 10, 2000. During a sworn transcribed interview with OI on November 2, 2000, and at the predecisional enforcement conference (PEC) on September 26, 2001, Mr. Spurling denied that he had selected the three painters for layoff because they had contacted FENOC with their concerns. Mr. Spurling also denied that he had prepared any termination paychecks prior to asking the painters to volunteer for layoff, and denied that he had destroyed one of the paychecks.

Following the PEC of September 26, 2001, the Williams Power Assistant General Counsel questioned Mr. Spurling about the termination paychecks. Mr. Spurling admitted that he had prepared the termination paychecks on March 9, 2000, prior to asking the painters to volunteer for layoff. Mr. Spurling also admitted that he destroyed a check when one of the painters did not volunteer for layoff. The Assistant General Counsel for Williams Power initiated an inquiry and determined from payroll records that a third check was prepared on March 9, 2000, and located a witness who had been contacted by Mr. Spurling and was told by Mr. Spurling to delete the third check from the payroll record.

In a second interview with OI on January 12, 2002, Mr. Spurling verified that he had prepared termination paychecks prior to asking the painters to volunteer for layoff and that he had destroyed a check when one of the painters did not volunteer for layoff. (OI Report No. 3–2000–025S.)

The Office of Investigations presented information to the U.S. Department of

Justice (DOJ) that Mr. Spurling had deliberately provided inaccurate information to NRC during a November 2, 2000, interview with OI and during the September 26, 2001, PEC. The Office of the United States Attorney, Chicago, Illinois, charged Mr. Spurling with a violation of 18 U.S.C. 1001(a)(2), ''Statements or Entries Generally,'' for the false information provided by Mr. Spurling to OI on November 2, 2000, while Mr. Spurling was under oath. On July 22, 2004, Mr. Spurling appeared in the United States District Court, Northern District of Illinois, Eastern Division, Chicago, Illinois, and entered a plea of guilty to the violation of 18 U.S.C. 1001(a)(2), a felony. Mr. Spurling was sentenced to serve one year of probation, ordered to perform 100 hours of community service, and ordered to pay a special assessment.

Based on the above, NRC concludes that Mr. Spurling deliberately provided materially inaccurate information to the NRC on November 2, 2000, and September 26, 2001, when he denied that he had: (1) Preselected the three painters for layoff; (2) prepared any termination paychecks prior to asking the painters to volunteer for layoff; and (3) destroyed one of the termination paychecks. This information was material to the NRC because it was capable of influencing a determination whether a violation of 10 CFR 50.7 had occurred.

Based on the above, Jack J. Spurling, an employee of Williams Power, a contractor at Perry, caused the Licensee and Williams Power to be in violation of 10 CFR 50.7, and deliberately provided materially inaccurate information to the NRC, placing both himself and Williams Power in violation of 10 CFR 50.5(a)(2). The NRC must be able to rely on its licensees, contractors of NRC licensees, and the employees of NRC licensees and their contractors to comply with NRC requirements, including the requirement to provide information that is complete and accurate in all material respects. Mr. Spurling's deliberate misrepresentations to the NRC have raised serious doubt as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to the NRC.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Jack J. Spurling were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Jack J. Spurling be prohibited from any involvement in NRC-licensed activities for a period of three years from the date of this Order and that he immediately cease NRC-licensed activities if currently involved in licensed activities with another NRC licensee.

Accordingly, pursuant to Sections 103, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR Part 50, and 10 CFR 150.20, *it is hereby ordered that*:

1. Jack J. Spurling is prohibited for three years from the date of this Order from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. If Jack J. Spurling is currently involved with any licensee in NRC-licensed activities, he must immediately cease those activities, and inform the NRC of the name, address, and telephone number of the licensee, and provide a copy of this Order to the licensee.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Jack J. Spurling of good cause.

In accordance with 10 CFR 2.202, Jack J. Spurling must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Jack J. Spurling or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region III, 2443 Warrenville Road, Suite 210, Lisle, Illinois 60532–4352, and to Mr. Spurling if the answer or hearing request is by a person other than Mr. Spurling. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to (301) 415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. If a person other than Jack J. Spurling requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309.

If a hearing is requested by Jack J. Spurling or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be effective and final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

Dated this 25th day of February, 2005.

For the Nuclear Regulatory Commission.

Frank J. Congel,

Director, Office of Enforcement.

[FR Doc. 05–4670 Filed 3–9–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–007]

Exelon Generating Company, LLC; Notice of Availability of the Draft Environmental Impact Statement for an Early Site Permit (ESP) at the Exelon ESP Site and Associated Public Meeting

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC, the Commission) has published NUREG–1815, ''Environmental Impact Statement for an Early Site Permit (ESP) at the Exelon ESP Site: Draft Report for Comment.'' The site is located near the town of Clinton in DeWitt County, Illinois. The application for the ESP was submitted by letter dated September 25, 2003, pursuant to Title 10 Code of the Federal Regulations Part 52 (10 CFR part 52). The application included a site redress plan in accordance with 10 CFR 52.17(c) and 52.25. If the site redress plan is incorporated in an approved ESP, then the applicant may carry out certain site preparation work and preliminary construction activities. A notice of receipt and availability of the application, which included the environmental report (ER), was published in the **Federal Register** on October 24, 2003 (68 FR 61020). A notice of acceptance for docketing of the application for the ESP was published in the **Federal Register** on October 30, 2003 (68 FR 61835). A notice of intent to prepare an environmental impact statement and to conduct the scoping process was published in the **Federal Register** on November 25, 2003 (68 FR 66130).

The purpose of this notice is to inform the public that NUREG–1815, ''Environmental Impact Statement for an Early Site Permit (ESP) at the Exelon ESP Site: Draft Report for Comment,'' is available for public inspection in the NRC Public Document Room (PDR) located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, or from the Publicly Available Records (PARS) component of NRC's Agencywide Documents Access and Management System (ADAMS), and will also be placed directly on the NRC Web site at *http://www.nrc.gov.* ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* (the Public Electronic Reading Room). Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* In addition, the Vespasian Warner Public Library, located at 310 North Quincy Street, Clinton, Illinois 61727, has agreed to make the DEIS available for public inspection.

The NRC staff will hold a public meeting to present an overview of the DEIS and to accept public comments on the document. The public meeting will be held at the Vespasian Warner Public Library, located at 310 North Quincy Street, Clinton, Illinois 61727, on Tuesday, April 19, 2005. The meeting will convene at 7 p.m. and will continue until 10 p.m., as necessary. The meeting will be transcribed and will include: (1) A presentation of the contents of the DEIS, and (2) the opportunity for interested government agencies, organizations, and individuals to provide comments on the draft report. Additionally, the NRC staff will host informal discussions one hour before the start of the meeting at the library. No formal comments on the DEIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meeting or in writing. Persons may register to attend or present oral comments at the meeting by contacting Ms. Jennifer Davis, by telephone at 1–800–368–5642, extension 3835, or by Internet to the NRC at *ClintonEIS@nrc.gov* no later than April 13, 2005. Members of the public may also register to speak at the meeting within 15 minutes of the start of the meeting. Individual oral comments may be limited by the time available, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak, if time permits. Ms. Davis will need to be contacted no later than April 13, 2005, if special equipment or accommodations are needed to attend or present information at the public meeting, so that the NRC staff can determine whether the request can be accommodated.

Members of the public may send written comments on the DEIS concerning the Exelon ESP application to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mailstop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** Notice. Comments may also be delivered to Room T–6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852, from 7:30 a.m. to 4:15 p.m. during Federal workdays. To be considered, written comments should be postmarked by May 25, 2005. Electronic comments may be sent by the Internet to the NRC at *ClintonEIS@nrc.gov.* Electronic submissions should be sent no later than May 25, 2005. Comments will be available electronically and accessible through the NRC's PERR link at *http://www.nrc.gov/reading-rm/adams.html.*

FOR FURTHER INFORMATION, CONTACT: Jennifer Davis, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001. Ms. Davis may be contacted at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 2nd day of March, 2005.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 05–4669 Filed 3–9–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 158th meeting on March 15–17, 2005, Room T–2B3, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Wednesday, December 8, 2004 (69 FR 71084).

The schedule for this meeting is as follows:

Tuesday, March 15, 2005

10:30 a.m.–10:40 a.m.: Opening Statement (Open)—The ACNW Chairman will make opening remarks regarding the conduct of today's sessions.

10:40 a.m.–11:40 a.m.: Preparation of ACNW Reports (Open)—The Committee will discuss potential letter report on the Status of High-Significant Agreements Associated with the Proposed HLW Repository. Other potential letter reports may be discussed.

1 p.m.–3 p.m.: Preparation for the March 16, 2005 Briefing with NRC Commissioners (Open)—The Committee will review the briefing materials to be discussed with the Commission on March 16, 2005.

3 p.m.–5 p.m.: Preparation for Visit to the Center for Nuclear Waste Regulatory Analyses (CNWRA) (Open)—The

Committee will review its preparation for its planned visit to the CNWRA in San Antonio, Texas on April 14–15, 2005. The purpose of this visit is to review the technical assistance work being performed on behalf of the NRC's Office of Nuclear Material Safety and Safeguards.

Wednesday, March 16, 2005

8:30 a.m.–9 a.m.: Final Preparation for Commission Briefing (Open).

9:30 a.m.–11:30 a.m.: Meeting with the NRC Commissioners (Open)—The Committee will meet with the NRC Commissioners in the Commission's Conference Room, One White Flint North. The outline for this proposed meeting is as follows:

- Introductory Remarks.
- Working Group Meetings.
- ICRP Draft Recommendations.
- Waste Management Research Review.
- Future Activities/Working Groups.
- 2005 ACNW Action Plan.

1 p.m.–1:10 p.m.: Opening Statement (Open)—The ACNW Chairman will begin the meeting with brief opening remarks, outline the topics to be discussed, and indicate items of interest.

1:10 p.m.–2:40 p.m.: Estimation of Groundwater Recharge at the Watershed Scale: Implications for Model Abstractions and Validations (Open)—The ACNW will hear presentations by and hold discussions with representatives of the Office of Nuclear Regulatory Research and Department of Agriculture/Agricultural Research Service staff on field studies to test and evaluate groundwater recharge estimation techniques, methods, and their uncertainties.

2:40 p.m.–3:40 p.m.: NMSS Office Director Semi-Annual Briefing (Open)—The Committee will be briefed by the Director of the Office of Nuclear Material Safety and Safeguards on recent activities of interest to the Committee.

4 p.m.–5 p.m.: Status of NRC's Review of USEC Inc.'s License Application for a Gas Centrifuge Uranium Enrichment Facility (Open)—The Committee will receive a briefing by an NMSS representative on the status of the license application for the proposed facility in Piketon, Ohio.

5 p.m.–6 p.m.: Preparation of ACNW Reports (Open)—The Committee will discuss potential reports on the Estimation of Groundwater Recharge Techniques and Status of USEC Inc.'s License Application for a Gas Centrifuge Uranium Enrichment Facility.

Thursday, March 17, 2005

8:30 a.m.–8:40 a.m.: Opening Statement (Open)—The ACNW Chairman will make opening remarks regarding the conduct of today's sessions.

8:40 a.m.–11 a.m.: Preparation for ACNW May 2005 Visit to Japan (Open)—The Committee will review preparations for its planned visit to Japan on May 14–21, 2005. The purpose of this visit is to meet with representatives of the Japan Nuclear Safety Commission (Tokyo). In addition, the Committee will meet with the operators of the Rokkasyo-Mura low-level radioactive waste reprocessing and disposal facility. Members will also meet with representatives of the Japan Atomic Energy Research Institute, the Japan Nuclear Cycle Development Institute, the Nuclear and Industrial Safety Agency, Japan Nuclear Fuel Limited, and the Nuclear Waste Management Organization of Japan.

1 p.m.–1:30 p.m.: ACNW White Paper on Low-Level Radioactive Waste Management Issues (Open)—The Committee will discuss the format and content of a potential ACNW White Paper addressing technical issues in the management of civilian low-level radioactive waste.

1:30 p.m.–3 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of ACNW activities, and specific issues that were not completed during previous meetings, as time and availability of information permit. Discussions may include future Committee Meetings.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on October 18, 2004 (69 FR 61416). In accordance with these procedures, oral or written statements may be presented by members of the public. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Persons desiring to make oral statements should notify Ms. Sharon A. Steele, (Telephone 301–415–6805), between 7:30 a.m. and 4 p.m. ET, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Ms. Steele as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted, therefore can be obtained by contacting Ms. Steele.

ACNW meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov*, or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/agendas).

Video Teleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audiovisual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m. ET, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: March 4, 2005.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 05–4667 Filed 3–9–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act; Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Week of March 7, 2005.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Matters to be Considered

Week of March 7, 2005

Monday, March 7, 2005

11:30 a.m. Discussion of Security Issues (Closed—Ex. 1).

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Dave Gamberoni, (301) 415–1651.

* * * * *

Additional Information

By a vote of 5–0 on March 7, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Discussion of Security Issues (Closed—Ex. 1)'' be held March 7, and on less than on week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify the NRC's Disability Program Coordinator, August Spector, at 301–415–7080, TDD: 301–415–2100, or by e-mail at *aks@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: March 7, 2005.

Dave Gamberoni,

Office of the Secretary.

[FR Doc. 05–4789 Filed 3–8–05; 10:00 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Sunshine Act, Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Week of March 7, 2005.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Matters to be Considered

Week of March 7, 2005

Monday, March 7, 2005

12:40 p.m. Discussion of Management Issues (Closed—Ex. 2).

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Dave Gamberoni, (301) 415–1651.

* * * * *

Additional Information

By a vote of 5–0 on March 7, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Discussion of Management Issues (Closed—Ex. 2)'' be held March 7, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http:www.nrc.gov/what-we-do/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, August Spector, at 301–415–7080, TDD: 301–415–2100, or by e-mail at *aks@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkvw@nrc.gov.*

Dated: March 7, 2005.

Dave Gamberoni,

Office of the Secretary.

[FR Doc. 05–4790 Filed 3–8–05; 10:00 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Public Availability of Fiscal Year 2004 Agency Inventories Under the Federal Activities Inventory Reform Act of 1998 (Public Law 105–270) (''FAIR Act'')

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of public availability of agency inventory of activities that are not inherently governmental and of activities that are inherently governmental.

SUMMARY: In accordance with the FAIR Act, agency inventories of activities that are not inherently governmental are now available to the public from the agencies listed below. The FAIR Act requires that OMB publish an announcement of public availability of agency inventories of activities that are not inherently governmental upon completion of OMB's review and consultation process concerning the content of the agencies' inventory submissions. After review and consultation with OMB, agencies make their inventories available to the public, and these inventories also include activities that are inherently governmental. This is the third release of the FAIR Act inventories for FY 2004. Interested parties who disagree with the agency's initial judgment can challenge the inclusion or the omission of an activity on the list of activities that are not inherently governmental within 30 working days and, if not satisfied with this review, may demand a higher agency review/appeal.

The Office of Federal Procurement Policy has made available a FAIR Act User's Guide through its Internet site: *http://www.whitehouse.gov/omb/procurement/fair-index.html.* This User's Guide will help interested parties review FY 2004 FAIR Act inventories, and gain access to agency inventories through agency Web site addresses.

Joshua B. Bolten,

Director.

ATTACHMENT—THIRD FAIR ACT RELEASE FY 2004

African Development Foundation	Mr. Larry Bevan, (202) 673–3948; *http://www.adf.gov.*

ATTACHMENT—THIRD FAIR ACT RELEASE FY 2004—Continued

American Battle Monuments Commission	Mr. Alan Gregory, (703) 696–6868; *http://www.abmc.gov.*
Department of Commerce	Mrs. Maile Arthur, (202) 482–1574; *http://www.doc.gov.*
Department of the Interior	Ms. Donna Kalvels, (202) 219–0727; *http://www.doi.gov.*
Department of the Interior (IG)	Mr. Roy Kime, (202) 208–6232; *http://www.oig.doi.gov.*
Department of Justice	Mr. Larry Silvis, (202) 616–3754; *http://www.usdoj.gov/jmd/pe/preface.htm.*
Department of Labor	Mr. Al Stewart, (202) 693–4028; *http://www.dol.gov.*
Department of Labor (IG)	Mr. David LeDoux, (202) 693–5100; *http://www.dol.gov.*
Federal Election Commission	Mr. John O'Brien, (202) 694–1216; *http://www.fec.gov.*
Federal Labor Relations Authority	Mr. David Smith, (202) 218–7999; *http://www.flra.gov.*
Federal Retirement Thrift Investment Board	Mr. Richard White, (202) 942–1633; *http://www.frtib.gov.*
National Transportation Safety Board	Ms. Barbara Czech, (202) 314–6169; *http://www.ntsb.gov.*
Office of Government Ethics	Mr. Sean Donohue (202) 482–9231; *http://www.usoge.gov.*
Office of National Drug Control Policy	Mr. Daniel Petersen, (202) 395–6745; *http://www.whitehousedrugpolicy.gov.*
U.S. Agency for International Development	Ms. Deborah Lewis, (202) 712–0936; *http://www.usaid.gov.*
U.S. Agency for International Development (IG)	Mr. Robert S. Ross, (202) 712–0010; *http://www.usaid.gov./oig/.*
U.S. Commission on Civil Rights	Ms. Tina Louise Martin, (202) 376–8364; *http://www.usccr.gov.*
Woodrow Wilson Center	Ms. Ronnie Dempsey, (202) 691–4216; *http://wwics.si.edu.*

[FR Doc. 05–4715 Filed 3–9–05; 8:45 am]

BILLING CODE 3110–01–P

OFFICE OF MANAGEMENT AND BUDGET

Public Availability of Fiscal Year 2004 Agency Inventories Under the Federal Activities Inventory Reform Act of 1998 (Pub. L. 105–270) (''FAIR Act'')

AGENCY: Office of Management and Budget; Executive Office of the President.

ACTION: Notice of public availability of agency inventory of activities that are not inherently governmental and of activities that are inherently governmental.

SUMMARY: In accordance with the FAIR Act, agency inventories of activities that are not inherently governmental are now available to the public from the agencies listed below. The FAIR Act requires that OMB publish an announcement of public availability of agency inventories of activities that are not inherently governmental upon completion of OMB's review and consultation process concerning the content of the agencies' inventory submissions. After review and consultation with OMB, agencies make their inventories available to the public, and these inventories also include activities that are inherently governmental. This is the third release of the FAIR Act inventories for FY 2004.

Interested parties who disagree with the agency's initial judgment can challenge the inclusion or the omission of an activity on the list of activities that are not inherently governmental within 30 working days and, if not satisfied with this review, may demand a higher agency review/appeal.

The Office of Federal Procurement Policy has made available a FAIR Act User's Guide through its Internet site: *http://www.whitehouse.gov/omb/procurement/fair-index.html.* This User's Guide will help interested parties review FY 2004 FAIR Act inventories, and gain access to agency inventories through agency Web-site addresses.

Joshua B. Bolten,

Director.

THIRD FAIR ACT RELEASE FY 2004

African Development Foundation	Mr. Larry Bevan, (202) 673–3948; *www.adf.gov.*
American Battle Monuments Commission	Mr. Alan Gregory, (703) 696–6868; *www.abmc.gov.*
Department of Commerce	Mrs. Maile Arthur, (202) 482–1574; *www.doc.gov.*
Department of the Interior	Ms. Donna Kalvels, (202) 219–0727; *www.doi.gov.*
Department of the Interior (IG)	Mr. Roy Kime, (202) 208–6232; *www.oig.doi.gov.*
Department of Justice	Mr. Larry Silvis, (202) 616–3754; *www.usdoj.gov/jmd/pe/preface.htm.*
Department of Labor	Mr. Al Stewart, (202) 693–4028; *www.dol.gov.*
Department of Labor (IG)	Mr. David LeDoux, (202) 693–5100; *www.dol.gov.*
Federal Election Commission	Mr. John O'Brien, (202) 694–1216; *www.fec.gov.*
Federal Labor Relations Authority	Mr. David Smith, (202) 218–7999; *www.flra.gov.*
Federal Retirement Thrift Investment Board	Mr. Richard White, (202) 942–1633; *www.frtib.gov.*
National Transportation Safety Board	Ms. Barbara Czech, (202) 314–6169; *www.ntsb.gov.*
Office of Government Ethics	Mr. Sean Donohue, (202) 482–9231, *www.usoge.gov.*
Office of National Drug Control Policy	Mr. Daniel Petersen, (202) 395–6745; *www.whitehousedrugpolicy.gov.*
U.S. Agency for International Development	Ms. Deborah Lewis, (202) 712–0936; *www.usaid.gov.*
U.S. Agency for International Development (IG)	Mr. Robert S. Ross, (202) 712–0010; *www.usaid.gov/oig/.*
U.S. Commission on Civil Rights	Ms. Tina Louise Martin, (202) 376–8364; *www.usccr.gov.*
Woodrow Wilson Center	Ms. Ronnie Dempsey, (202) 691–4216; *wwics.si.edu.*

[FR Doc. 05–4698 Filed 3–9–05; 8:45 am]
BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51303; File No. SR–CHX–2005–05]

Self-Regulatory Organizations; Chicago Stock Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Extension of a Pilot Relating to Transactions in Certain Exchange-Traded Funds

March 2, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 2, 2005, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') a request for reinstatement and extension of a pilot rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6)[4] thereunder, which renders the rule change effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposal from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In its submission, the Exchange requested extension of a pilot rule change to CHX Article XX, Rule 37(a), which governs manual execution of eligible market and marketable limit orders. The pilot rule change, which will remain in effect for an additional 60-day pilot period, permits a CHX specialist, acting in its principal capacity, to manually execute an incoming market or marketable limit order in one of three exchange-traded funds at a price other than the national best bid or offer.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 28, 2002, the Commission issued an order granting a *de minimis* exemption (''Exemption'') for transactions in certain exchange-traded funds (''Exempt ETFs'')[6] from the trade-through provisions of the Intermarket Trading System (''ITS'') Plan.[7]

As stated by both Commission staff and Commissioners at an open meeting on August 27, 2002, rapid-fire quotations and executions in Exempt ETFs occur consistently throughout the trading day within a range around the NBBO, rendering it extremely difficult, if not impossible, to access liquidity at an exact NBBO price point. Compounding the ''flickering'' noted by the Commission, the Exchange has noted a marked increased in the incidence of locked and crossed markets in Exempt ETFs.

CHX Article XX, Rule 37(a), commonly referred to as the Exchange's ''Best Rule,'' requires that with respect to any market or marketable limit order not executed automatically, a CHX specialist must '' * * * either (a) manually execute such order at a price and size equal to the NBBO price and size the time the order was received; or (b) act as agent for such order in seeking to obtain the best available price for such order on a marketplace other than the Exchange, using order routing systems where appropriate.''

Given the unique environment in which the ETFs are traded, and the difficulty that CHX specialists often encounter in accessing NBBO price points, the Exchange's Department of Market Regulation (''Department'') believes that its enforcement of the Best Rule must take the ETF trading environment into account when the Department evaluates the execution prices of eligible market and marketable limit orders for Exempt ETFs. The Department believes that in certain instances, execution of an order in an Exempt ETF at a price other than the NBBO may nonetheless be consistent with the specialist's best execution obligation, in light of the unique environment that characterizes trading in Exempt ETFs. The Exchange believes that the current version of the BEST Rule contains sufficient latitude with respect to an order executed by a CHX specialist acting as agent for the order,[8] but does not contemplate any flexibility for specialists acting in their principal capacity.[9] Accordingly, the Exchange obtained pilot approval of the attached rule change, which permits a CHX specialist, acting in its principal capacity, to manually execute an incoming market or marketable limit order in an Exempt ETF at a price other than the NBBO.[10] The pilot expired on February 24, 2005.[11] Accordingly, the Exchange requests reinstatement and a sixty-day extension of the pilot rule change; the pilot rule text incorporated into this submission as Exhibit 5 does not differ in any respect from the existing pilot rule provisions.

Significantly, the pilot rule change does not excuse a CHX specialist from their best execution obligations with respect to manually-executed orders. Moreover, the pilot rule change only relates to orders that are executed manually, when a CHX specialist's ability to obtain liquidity at an exact NBBO price point is extremely limited. Orders that are executed automatically will continue to be executed by the Exchange's MAX® automated execution system at the NBBO in effect at the time the order is received.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 4 17 CFR 240.19b–4(f)(6).

[5] The Commission waived the 5-day prefiling notice requirement.

[6] The three affected Exempt ETFs are the exchange-traded funds tracking the Nasdaq-100 Index (''QQQ''), the Dow Jones Industrial Average (''DIAMONDs'') and the Standard & Poor's 500 Index (''SPDRs'').

[7] *See* Securities Exchange Act Release No. 46428 (August 28, 2002). At present, the Exemption extends to transactions that are ''executed at a price that is no more than three cents lower than the highest bid displayed in CQS and no more than three cents higher than the lowest offer displayed in CQS.''

[8] The Best Rule provision governing manual agency executions obligates the CHX specialist to seek ''* * * the best *available price.*'' CHX Article XX, Rule 37(a)(2).

[9] The Best Rule provision governing manual principal executions obligates the CHX specialist to execute the order at the '' * * * *NBBO price and size* at the time the order was received.'' CHX Article XX, Rule 37(a)(2).

[10] This rule change is closely analogous to the Exchange's previously submitted interpretation regarding execution of resting limit orders in Exempt ETFs. Under the limit order interpretation, CHX specialists need not provide execution guarantees for Exempt ETFs, based on trade-throughs by other markets, that CHX specialists typically provide to all other listed issues. *See* Securities Exchange Act Release No. 46557 (September 26, 2002), 67 FR 61941 (October 2, 2002).

[11] *See* Securities Exchange Act Release No. 50935 (December 27, 2004), 70 FR 414 (January 4, 2005).

2. Statutory Basis

The CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[12] The CHX believes the proposal is consistent with Section 6(b)(5) of the Act [13] in that it is designed to promote just and equitable principles of trade, to remove impediments, and to perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed pilot rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [14] and Rule 19b–4(f)(6) thereunder.[15] At any time during the 60-day pilot period, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the Commission waive the 30-day operative delay in Rule 19b–4(f)(6)(iii). The Commission believes such waiver is consistent with the protection of investors and the public interest because it will allow the pilot to operate without delay. For this reason, the Commission designates the proposal to be effective and operative upon filing with the Commission.[16]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec. gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–CHX–2005–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File No. SR–CHX–2005–05. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec. gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the CHX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CHX–2005–05 and should be submitted on or before March 31, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–1012 Filed 3–9–05; 8:45 am]

BILLING CODE 8010–01–P

[12] 15 U.S.C. 78(f)(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

[16] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 5013]

30-Day Notice of Proposed Information Collection: Form DS–2019, Certificate of Eligibility for Exchange Visitor (J–1) Status, OMB Number 1405–0119

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Certificate of Eligibility for Exchange Visitor (J–1) Status.
- *OMB Control Number:* 1405–0119.
- *Type of Request:* Extension of a currently approved collection.
- *Originating Office:* Bureau of Educational and Cultural Affairs, DOS/ECA/EC.
- *Form Number:* DS–2019.
- *Respondents:* Department of State designated Exchange Visitor Program sponsors and exchange visitors.
- *Estimated Number of Respondents:* 300,000.
- *Estimated Number of Responses:* 300,000.
- *Average Hours per Response:* 45 minutes.
- *Total Estimated Burden:* 225,000.
- *Frequency:* On occasion.
- *Obligation To Respond:* Required to obtain or retain a benefit.

DATES: The Department will accept comments from the public for up to 30 days from March 10, 2005.

ADDRESSES: Comments and questions should be directed to Alex Hunt, the State Department Desk Officer in Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached on (202) 395–7860. You may submit comments by any of the following methods:

- *E-mail: ahunt@omb.eop.gov.* You must include the DS form number (if applicable), information collection title, and OMB control number in the subject line of your message.

• *Hand Delivery or Courier:* OIRA State Department Desk Officer, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503.

• *Fax:* (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed information collection and supporting documents from Vicki Rose, Office of Exchange Coordination and Designation, Bureau of Educational and Cultural Affairs, 301 Fourth Street, SW., Room 734, U.S. Department of State, Washington, DC 20547, who may be reached on 202–203–5096 or by e-mail at *RoseVT@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary to properly perform our functions.

• Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: This Form collects information on nonimmigrants for the purpose of producing a document to enable a nonimmigrant to seek a visa to participate in the Exchange Visitor Program.

Methodology: The information is collected electronically and is maintained in the Student and Exchange Visitor Information System (SEVIS).

Dated: February 24, 2005.

Cathy T. Chikes,

Executive Director, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 05–4720 Filed 3–9–05; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5011]

FY–2006 English Language Fellow Program; Bidders' Workshop

The Bureau of Educational and Cultural Affairs invites potential applicants to attend a bidders' workshop in conjunction with the Request for Grant Proposals (RFGP), #ECA/A/L–06–01 for the management of the FY–2006 English Language Fellow Program. This session is scheduled for Wednesday March 23 at the U.S. Department of State Annex 44, 301 4th Street, SW., Room 800A, Washington, DC 20547 from 2–4 p.m.

Interested parties must contact Catherine Williamson at (202) 619–5878, e-mail: *williamsoncj@state.gov* or Janice Curreri at (202) 619–5885, e-mail: *currerijl@state.gov* no later than Monday, March 21, 2005, to confirm attendance.

The workshop will provide an overview of the English Language Fellow Program, the responsibilities of the grantee organization selected to administer the FY–2006 program as outlined in the RFGP, and provide the opportunity for participants to ask questions about the program and the RFGP.

Participants are responsible for paying their own roundtrip transportation to Washington, DC and all other related costs.

Dated: March 4, 2005.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 05–4718 Filed 3–9–05; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5012]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: English Language Fellow Program for Academic Year 2006–2007

Announcement Type: Cooperative Agreement.

Funding Opportunity Number: ECA/A/L–06–01.

Catalog of Federal Domestic Assistance Number: 19.421.

Key Dates: Application Deadline: May 20, 2005.

Executive Summary: The Office of English Language Programs of the Bureau of Educational and Cultural Affairs announces an open competition for proposals to advance the Bureau's objectives through support of academic exchanges that will result in the improvement of English teaching capacity around the world and the enhancement of mutual understanding between the people of the United States and people overseas.

The English Language Fellow Program places American citizens holding advanced TEFL/TESL or Applied Linguistics degrees with teacher-training and/or materials development experience and recent graduates with TEFL/TESL Master's degrees in all regions of the world at universities, teacher-training institutions, ministries of education, bi-national centers and other related language education institutions for ten-month assignments. Pending the availability of FY 2006 Funds, the Bureau anticipates placement of approximately 120 English Language Fellows overseas in academic year 2006–2007. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501 (c) (3) may submit proposals to administer and manage the English Language Fellow Program for academic year 2006–2007.

I. Funding Opportunity Description

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Purpose

The English Language Fellow Program places experienced American teacher trainers and recent TEFL/TESL Master's degree graduates in all regions of the world at universities, teacher-training institutions, ministries of education, bi-national centers and other related language education institutions for ten-month assignments. The Program provides an opportunity for American English language professionals to share their vast knowledge and skills overseas, to cultivate international teaching experience for Americans and to promote cross-cultural partnerships that will foster a better and firsthand understanding of the United States and its citizens. There are two levels of English Language Fellows:

1. English Language Fellows (formerly known as junior Fellows) are graduates who have received their TEFL/TESL M.A. degrees within the past seven years and who may or may not have prior overseas teaching experience.

Fellows serve as full-time teachers of English as a Foreign Language (EFL). Normal teaching duties are 20 contact hours per week with additional work in teacher training, curriculum, and testing. Together these duties should not exceed 40 hours per week and should not include administrative work.

2. Senior English Language Fellows are experienced teacher trainers who have an M.A. or higher degree in TEFL/TESL or a closely related field and who have significant overseas teaching experience. Fellows serve as full-time teacher trainers and participants in the following program-related activities: teaching English for Specific Purposes (ESP) in a variety of professional fields, designing English as a Foreign Language (EFL) curricula materials, conducting program evaluation and testing, and organizing workshops and conferences.

The overarching goals of the English Language Fellow Program are to:

- Advance the Department of State's mutual understanding objectives;
- Enhance English teaching capacity overseas in order to provide foreign teachers and students with the communications skills they will need to participate in the global economy;
- Improve foreign teachers' and students' access to diverse perspectives on a broad variety of issues; and
- Give foreign teachers and students information that will enable them to better understand and convey concepts about American values, democratic representative government, free enterprise, and the rule of law.

Applicant Eligibility

- Applicants must be citizens of the United States.
- Fellow applicants must have received a Master's degree in TEFL/TESL within the last seven years.
- Senior Fellow applicants must have previous overseas teaching experience and a Master's degree or higher in TEFL/TESL, Applied Linguistics (or a related field).

Background

Since the events of September 11, 2001, the English Language Fellow Program has become a major public diplomacy tool for combating terrorism and democracy building. The program's funding and the number of participants have increased by more than 70% in the past three years with a high concentration of the placements in Muslim countries. The Bureau seeks to award grant funding to applicants with the ability to continue these objectives, incorporate lessons learned and build upon past successes in order to further expand the breadth of the program. A grant will be awarded to an organization or organizations that have the necessary infrastructure and experience conducting academic exchange programs. The timing of the grant award and the amount of funding for this program are subject to the availability of funds in fiscal year 2006.

The Bureau will accept proposals from single applicants or from those that have formed partnerships with qualified partners to implement specific tasks required to carry out the project.

Program Guidelines

The responsibilities of the organization administering the program range from promoting the English Language Fellow Program to providing logistical support and include:

- Conducting extensive and comprehensive promotion and advertisement of the Fellows Program;
- Recruiting the most qualified, experienced and brightest applicants for the English Language Fellow Program. The Bureau plans to select up to 120 English Language Fellows (approximately 80% will be English Language Fellows, 20% Senior English Language Fellows) for worldwide placement in AY 2006–2007;
- Hiring experienced and knowledgeable TEFL/TESL-qualified staff to recruit Fellows and to match Fellows' professional skills with specific projects in order to maximize Fellows' effectiveness and positive impact on in-country programs and their ability to help advance ECA's public diplomacy goals;
- Planning and conducting a pre-departure briefing for Fellows in Washington, DC;
- Providing fiscal management of program budgets;
- Providing travel and logistical support to embassies on behalf of Fellows' activities;
- Enrolling Fellows in the Bureau Accident and Sickness Program for Exchanges (ASPE), including submitting Fellows' health verification records to the Bureau for clearance;
- Monitoring Fellows programs, activities and participants;
- Conducting regional site visits;
- Developing an evaluation strategy designed to measure the impact and outcome of the program as well as the effectiveness of individual participants;
- Assisting the Bureau and designated posts sponsoring conferences with planning and implementation of up to five (5) overseas regional Fellow Mid-Year conferences;
- Maintaining information sharing activities (Web site, listserv, database) and disseminating alumni updates.

The responsibilities of the grantee organization are clearly detailed in the Project Objectives, Goals and Implementation (POGI). Due to the diverse responsibilities involved in administering the cooperative agreement, the Bureau welcomes the submission of proposals involving a consortium of grant-managing organizations. These organizations may be sub-grantees responsible for carrying out specific activities or components of the program such as recruitment, financial and logistical management, reporting requirements, pre-departure briefing, evaluations, etc.

The Office of English Language Programs and U.S. embassies are substantially involved in program roles and responsibilities. The U.S. embassies facilitate managing the Fellow Program in country while the Bureau provides overall program and policy design and direction that require substantial involvement at all levels of the Fellows Program. Under the auspices of the cooperative agreement, the role of the Bureau and the Department's regional geographic bureaus includes:

- Inviting U.S. embassies to submit English Language Fellow proposals;
- Reviewing and analyzing projects' viability in raising the academic standards of English Language teaching and in promoting the Bureau's public diplomacy goals;
- Analyzing the impact of projects on communities and the ability of prospective projects to meet community needs;
- Prioritizing and finalizing selection of projects for which grantee organization will recruit Fellow candidates;
- Reviewing candidates' qualifications and resumes, and monitoring projects, participants and program activities;
- Communicating with U.S. embassies to resolve program and Fellow issues;
- Reviewing reports about Fellow activities and projects in the field.

U.S. embassies submit proposals that have identified opportunities for partnerships with in-country host institutions in accordance with the guidance provided by the Bureau and the Department's regional geographical bureaus, and are responsible for managing the Fellow Program on the ground. The role of the U.S. embassies includes:

- Host institution selection, including evaluating security of prospective sites;
- Establishing viable partnerships with prospective in-country host institutions that have critical English language programming needs;

• Developing project proposals in consultation with in-country host institutions to be managed by Fellows;
• Reviewing applicants' qualifications and making final selections of Fellow candidates in consultation with in-country host institutions;
• Contacting Fellows prior to arrival to answer questions, manage expectations, and ensure that they have accurate information regarding housing, visa requirements, the security situation, etc.;
• Conducting Fellows' in-country orientation and security/safety briefing;
• Working to maximize participants' safety, security and well-being, locating and securing quality housing, ensuring that the Fellows' visa/residency status is adjusted immediately after arrival in host country to comply with host country immigration regulations; and acting as a direct point of contact;
• Conducting site visits and the monitoring of Fellows' programs and activities.

II. Award Information

Type of Award: Cooperative Agreement. Bureau's level of involvement in this program is listed under number I above.

Fiscal Year Funds: FY 2006 (Pending availability of funds).

Approximate Total Funding: $6,000,000.

Approximate Number of Awards: 1.

Approximate Average Award: $6,000,000.

Floor of Award Range: N/A.

Ceiling of Award Range: N/A.

Anticipated Award Date: Pending availability of funds, October 1, 2005.

Anticipated Project Completion Date: September 30, 2007.

Additional Information: Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is the Bureau's intent to renew this grant for two additional fiscal years before openly competing it again.

III. Eligibility Information

III.1. *Eligible applicants:* Proposals may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S. 501(c)(3).

III.2. *Cost Sharing or Matching Funds:* There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs. When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, the applicant must maintain written records to support all costs that are claimed as a contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event the applicant does not provide the minimum amount of cost sharing as stipulated in the approved budget, Bureau's contribution will be reduced in like proportion.

III.3. *Other Eligibility Requirements:* Bureau grant guidelines require that organizations with less than four years of experience in conducting international exchanges be limited to $60,000 in Bureau funding. The Bureau anticipates awarding one grant, in an amount up to $6,000,000, to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

IV. Application and Submission Information

Note: Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1. *Contact Information to Request an Application Package:* Please contact the Office of English Language Programs, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, telephone (202) 619–5878 and fax (202) 401–1250, or *williamsoncj@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/A/L–06–01 located at the top of this announcement when making your request.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document, which consists of required application forms, and standard guidelines for proposal preparation. It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Office of English Language Programs, Program Officer Catherine Williamson and refer to the Funding Opportunity Number ECA/A/L–06–01 located at the top of this announcement on all other inquiries and correspondence.

IV.2. *To Download a Solicitation Package Via Internet:* The entire Solicitation Package may be downloaded from the Bureau's Web site at: *http://exchanges.state.gov/education/rfgps/menu.htm.* Please read all information before downloading.

IV.3. *Content and Form of Submission:* Applicants must follow all instructions in the Solicitation Package. The original and 15 copies of the application should be sent per the instructions under IV.3e. ''Submission Dates and Times'' section below.

IV.3a. Applicants are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that the DUNS number is included in the appropriate box of the SF–424, which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget. Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c. Applicants must have nonprofit status with the IRS at the time of application. If applicant's organization is a private nonprofit which has not received a grant or cooperative agreement from the Bureau in the past three years, or if the organization received nonprofit status from the IRS within the past four years, applicant must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause the proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1. *Adherence to All Regulations Governing the J Visa:* Although the

English Language Fellow program's goal is to place U.S. citizens in positions overseas and only very rarely is involved in bringing foreign citizens to the U.S., nonetheless the Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of the Exchange Visitor Programs as set forth in 22 CFR 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, recordkeeping, reporting and other requirements.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 401–9810, Fax: (202) 401–9809.

Please refer to Solicitation Package for further information.

IV.3d.2. *Diversity, Freedom and Democracy Guidelines:* Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. *Program Monitoring and Evaluation:* Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends proposals include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the applicant will track participants and partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge. Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. The evaluation plan should include a description of the project's objectives, anticipated project outcomes, and how and when these outcomes (performance indicators) will be measured. The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation.

Applicants must also show how the project objectives link to the goals of the program described in this RFGP. The monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes,* in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage applicants to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

- Participant satisfaction with the program and the exchange experience.
- Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.
- Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.
- Institutional changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes. Overall, the quality of the monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.*, surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

Describe plans for: Sustainability, overall program management, staffing, coordination with the Bureau and U.S. embassies or any other requirements, etc.

IV.3e. Please take the following information into consideration when preparing the budget:

IV.3e.1. Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

IV.3e.2. For allowable costs for the program, please refer to the Solicitation

Package and POGI for complete budget guidelines and formatting instructions.

IV.3f. *Submission Dates and Times: Application Deadline Date:* May 20, 2005.

Explanation of Deadlines: In light of recent events and heightened security measures, proposal submissions must be sent via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.) and be shipped no later than the above deadline. The delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at the Bureau more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to the Bureau via the Internet. The Bureau will *not* notify applicants upon receipt of application. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered. Applications may not be submitted electronically at this time. Applicants must follow all instructions in the Solicitation Package.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original and 15 copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/L–06–01, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3g. *Intergovernmental Review of Applications:* Executive Order 12372 does not apply to this program. Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal in text (.txt) format on a PC-formatted disk. The Bureau will provide these files electronically to the appropriate Public Affairs Section(s) at the U.S. embassy(ies) for embassy review.

V. Application Review Information

V.1. *Review Process:* The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for cooperative agreements resides with the Bureau's Grants Officer.

Review Criteria: Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the program idea: Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission.

2. Program planning: Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. Ability to achieve program objectives: Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. Multiplier effect/impact: Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

6. Institutional Capacity: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. Institution's Record/Ability: Proposals should demonstrate an institutional record of successful exchange programs management, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grants Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. Follow-on Activities: Proposals should provide a plan for continued follow-on activity (without Bureau support) ensuring that Bureau supported programs are not isolated events.

9. Project Evaluation: Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives are recommended.

10. Cost-effectiveness/Cost-sharing: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost sharing through other private sector support as well as institutional direct funding contributions.

11. Value to U.S.-Partner Country Relations: Proposed projects should receive positive assessments by the U.S. Department of State's geographic area desk and overseas officers of program need, potential impact, and significance in the partner countries.

12. TEFL–TESL Background: Proposals should demonstrate a plan to network that allows for the greatest dissemination of information to the profession of Teachers of English as a Second or Foreign Language. Moreover, the applicant must be able to provide knowledgeable, experienced management staff with TEFL/TESL academic (Master's degree or above) qualifications capable of interviewing candidates and evaluating their teaching qualifications.

VI. Award Administration Information

VI.1a. *Award Notices:* Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant

proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the Bureau program office coordinating this competition.

VI.2 *Administrative and National Policy Requirements:* Terms and Conditions for the Administration of Bureau agreements include the following:

• Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

• Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

• OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments.''

• OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

• OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

• OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information:

• *http://www.whitehouse.gov/omb/grants.*

• *http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI.*

VI.3. Reporting Requirements: Grantee must provide Bureau with a hard copy original plus two copies of the following reports:

Interim Program Reporting: A report describing and evaluating the activities undertaken pursuant to this Agreement shall be submitted within 30 days following each calendar year quarter.

Interim Financial Reporting: A report reflecting expenditures against each line item set forth in Section C of Article III of the award document shall be submitted within 30 days following each calendar year quarter. The Recipient's Chief Fiscal Officer or an officer of comparable rank must certify this report.

Final Program Reporting: A report describing and evaluating the activities undertaken pursuant to this Agreement shall be submitted within ninety (90) days after the expiration date of this Agreement.

Final Financial Reporting: A report reflecting expenditures against each line item set forth in Section of Article III of the award document shall be submitted within ninety (90) days after the expiration date of this Agreement. This report must disclose cost sharing and be certified by the Recipient's Chief Fiscal Officer or an officer of comparable rank.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request. All reports must be sent to the Bureau Grants Officer and the Bureau Program Officer listed in the final assistance award document.

Optional Program Data Requirements: Organizations awarded grants will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the grant or who benefit from the grant funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in country and U.S. activities must be received by the Bureau Program Officer at least three working days prior to the official opening of the activity.

VII. Agency Contacts

For questions about this announcement, contact: Catherine Williamson, Office of English Language Programs, Programs Branch, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, at (202) 619–5878 and fax: (202) 401–1250, e-mail: *WilliamsonCJ@state.gov.*

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/L–06–01.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice: The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: February 28, 2005.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 05–4721 Filed 3–9–05; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice: Receipt of Noise Compatibility Program and Request for Review

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Montgomery Airport Authority for Montgomery Regional Airport under the provisions of 49 U.S.C. 47501 *et seq.* (Aviation Safety and Noise Abatement Act) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program update that was submitted for Montgomery Regional Airport under part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before August 27, 2005.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is March 1, 2005. The public comment period ends April 29, 2005.

FOR FURTHER INFORMATION CONTACT: Kristi Ashley, 100 West Cross Street, Suite B, Jackson, MS 39208, (601) 664–9891. Comments on the proposed noise compatibility program update should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Montgomery Regional Airport are in compliance with applicable

requirements of part 150, effective March 1, 2005. Further, FAA is reviewing a proposed noise compatibility program update for that airport which will be approved or disapproved on or before August 27, 2005. This notice also announces the availability of this program for public review and comment.

Under 49 U.S.C. 47503 (the Aviation Safety and Noise Abatement Act, hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

Montgomery Airport Authority submitted to the FAA on August 19, 2004, noise exposure maps, descriptions and other documentation that were produced during the Montgomery Regional Airport Noise Compatibility Study Update. It was requested that the FAA review the material as the noise exposure maps, as described in section 47503 of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 47504 of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by Montgomery Airport Authority. The specific documentation determined to constitute the noise exposure maps includes current and forecast NEM graphics, plus all other narrative, graphic, or tabular representations of the data required by section A150.101 of part 150, and sections 47503 and 47506 of the Act, more specifically considered by FAA to be Chapter 3 of the Airport Noise Compatibility Study Update submitted to FAA on August 19, 2004. The FAA has determined that these maps for Montgomery Regional Airport are in compliance with applicable requirements. This determination is effective on March 1, 2005. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or constitute a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Montgomery Regional Airport, also effective on March 1, 2005. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before August 27, 2005.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208; Montgomery Regional Airport, Montgomery Airport Authority, 4445 Selma Highway Montgomery, AL 36108.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Jackson, MS, March 1, 2005.

Rans Black,

Manager, Jackson Airports District Office.

[FR Doc. 05–4653 Filed 3–9–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2005–15]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket

number involved and must be received on or before March 30, 2005.

ADDRESSES: You may submit comments (identified by DOT DMS Docket Number FAA–200X–XXXXX) by any of the following methods:

- Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tim Adams (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on March 4, 2005.

Anthony F. Fazio,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2003–14227.

Petitioner: Flight Level Aviation, Inc.

Section of 14 CFR Affected: 14 CFR 61.56(i)(1).

Description of Relief Sought: To allow Flight Level Aviation, Inc., to use a flight simulator or flight training device that is not used in accordance with an approved course conducted by a training center certificated under part 142 of this chapter.

[FR Doc. 05–4752 Filed 3–9–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement No. ANE–2003–35–1–R0]

Policy for Propeller Ice Protection Equipment

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of issuance; policy statement.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of policy for Propeller Ice Protection Equipment.

DATES: The FAA issued policy statement number ANE–2003–35–1–R0 on March 2, 2005.

FOR FURTHER INFORMATION CONTACT: Jay Turnberg, FAA, Engine and Propeller Standards Staff, ANE–110, 12 New England Executive Park, Burlington, MA 01803; e-mail *jay.turnberg@faa.gov;* telephone (781) 238–7116; fax: (781) 238–7199. The policy statement is available on the Internet at the following address: *http://www.airweb.faa.gov/rgl.* If you do not have access to the Internet, you may request a copy of the policy by contacting the individual listed in this section.

SUPPLEMENTARY INFORMATION: The FAA published a notice in the **Federal Register** on October 26, 2004 (69 FR 62505) to announce the availability of the proposed policy and invite interested parties to comment.

We have filedd in the docket all comments we received, as well as a report summarizing each substantive public contact with FAA personnel concerning this policy. The docket is available for public inspection. If you wish to review the docket in person, go to the above address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Background

The policy provides guidance for compliance with parts 21, 23, 25, and 35 of Title 14 of the Code of Federal Regulations. The policy clarifies configuration and quality control responsibilities for certificate holders and parts suppliers involved with propeller ice protection systems on type certificated products.

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

Issued in Burlington, Masssachusetts, on March 2, 2005.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 05–4744 Filed 3–9–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Iron County, UT

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed roadway project in Iron County, Utah.

FOR FURTHER INFORMATION CONTACT: Sandra Garcia-Aline, Project Manager, Federal Highway Administration, 2520 West 4700 South, Suite 9A, Salt Lake City, UT 84118, Telephone: (801) 963–0078 ext. 250.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration (FHWA), in cooperation with the Utah Department of Transportation (UDOT) and Cedar City will prepare an Environmental Impact Statement (EIS) on a proposal to improve the Cross Hollow road in Iron County, Utah. The proposed project would involve the construction of a road between the south Cedar City/I–15 interchange and the SR–56/Cross Hollow Road intersection; a distance of approximately 3 miles. The existing Cross Hollow road is mostly unimproved and unpaved. Improved sections of the road presently exist at the south Cedar City/I–15 interchange and the SR–56/Cross Hollow Road intersection.

Improvements to the corridor are considered necessary to provide for the existing and projected traffic demand. Alternatives under consideration include (1) taking no action, (2) constructing a new road on the existing alignment, and (3) constructing a new road on a new alignment. Various design variations of grade and alignment will be investigated as part of the EIS.

Information describing the proposed action and soliciting comments will be sent to appropriate federal, state, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series

of public meetings will be held in Cedar City in Spring 2005. In addition, a public hearing will be held after the draft EIS has been prepared. The draft EIS will be available for public and agency review and comment before the public hearing.

To ensure that a full range of issues related to the proposed action is addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning the proposed action and the EIS should be directed to the FHWA as mentioned above.

(Catalog of Federal and Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities apply to this program.)

Issued on: March 4, 2005.

Jeffrey Berna,

FHWA Environmental Specialist, Salt Lake City, UT.

[FR Doc. 05–4685 Filed 3–9–05; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[MARAD 2005 20527]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intention to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before May 9, 2005.

FOR FURTHER INFORMATION CONTACT: Celia Luck, Maritime Administration, 400 Seventh St., SW., Washington, DC 20590. Telephone: 202–366–3581, Fax: 202–366–6988; or e-mail: *celia.luck@marad.dot.gov.* Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Intermodal Access to Shallow Draft Ports and Terminals Survey.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0534.

Form Numbers: MA–1024B.

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Summary of Collection of Information: The Maritime Administration (MARAD) has primary responsibility for ensuring the availability of efficient water transportation service to shippers. This information collection is designed to be a survey of critical infrastructure issues that impact the Nation's shallow draft marine ports and terminals. The survey will provide MARAD with key road, rail, and waterside access data as well as security information and highlight the issues that affect the flow of cargo through U.S. shallow draft marine ports and terminals.

Need and Use of the Information: This collection will allow MARAD to assess the magnitude and nature of impediments to efficient intermodal connections to shallow draft marine ports and terminals and provide information on correcting deficiencies.

Description of Respondents: Officials at the Nation's key shallow draft marine ports and terminals.

Annual Responses: 15.

Annual Burden: 7.5.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Comments also may be submitted by electronic means via the Internet at *http://dms.dot.gov/submit.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. e.d.t. (or e.s.t.), Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov.*

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

(Authority: 49 CFR 1.66.)

Dated: March 3, 2005.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–4643 Filed 3–9–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2005 20538]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intention to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before May 9, 2005.

FOR FURTHER INFORMATION CONTACT: Kenneth Kline, Maritime Administration, 400 Seventh St., SW., Washington, DC 20590. Telephone: 202–366–5744, FAX 202–366–7901; or e-mail: *kenneth.kline@marad.dot.gov*. Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Application for Construction Reserve Fund and Annual Statements.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0032.

Form Numbers: None.

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Summary of Collection of Information: The collection consists of an application required for all citizens who own or operate vessels in the U.S. foreign or domestic commerce and desire tax benefits under the Construction Reserve Fund (CRF) program. The annual statement sets forth a detailed analysis of the status of the CRF when each income tax return is filed.

Need and Use of the Information: The information is required in order for MARAD to determine whether the applicant is qualified for the benefits of the CRF program.

Description of Respondents: Owners or operators of vessels in the domestic or foreign commerce.

Annual Responses: 17 responses.

Annual Burden: 153 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Comments also may be submitted by electronic means via the Internet at *http://dms.dot.gov/submit.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT (or EST), Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov*.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

(Authority: 49 CFR 1.66.)

Dated: March 3, 2005.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–4647 Filed 3–9–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD2005 20537]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intention to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before May 9, 2005.

FOR FURTHER INFORMATION CONTACT: Kenneth Kline, Maritime Administration, 400 Seventh St., SW., Washington, DC 20590. Telephone: 202–366–5744; Fax: 202–366–7901; or e-mail: *kenneth.kline@marad.dot.gov*. Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Title XI Obligation Guarantees.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0018.

Form Numbers: MA–163, MA–163A.

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Summary of Collection of Information: In accordance with the Merchant Marine Act, 1936, MARAD is authorized to execute a full faith and credit guarantee by the United States of debt obligations issued to finance or refinance the construction or reconstruction of vessels. In addition, the program allows for financing shipyard modernization and improvement projects.

Need and Use of the Information: The information collected is necessary for MARAD officials to evaluate an applicant's project and capabilities, make the required determinations, and administer any agreements executed upon approval of loan guarantees.

Description of Respondents: Individuals/businesses interested in obtaining loan guarantees for construction or reconstruction of vessels as well as businesses interested in shipyard modernization and improvements.

Annual Responses: 15.

Annual Burden: 1050 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Comments also may be submitted by electronic means via the Internet at *http://dms.dot.gov/submit.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT (or EST), Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov*.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

Authority: 49 CFR 1.66.

Dated: March 3, 2005.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–4648 Filed 3–9–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD 2005 20526]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel IMGOIN.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2005–20526 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to

properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before April 11, 2005.

ADDRESSES: Comments should refer to docket number MARAD–2005 20526. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel IMGOIN is:

Intended Use: ''Boat and Breakfast cruises/overnight stays''.

Geographic Region: ''Washington State''.

Dated: March 3, 2005.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–4646 Filed 3–9–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2005 20524]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel OSPREY.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2005–20524 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before April 11, 2005.

ADDRESSES: Comments should refer to docket number MARAD–2005 20524. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel OSPREY is:

Intended Use: Taking of passengers on sport fishing trips. No fish will be sold commercially.

Geographic Region: Pt. Conception, California to Mexico.

Dated: March 3, 2005.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–4644 Filed 3–9–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD 2005 20525]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel VENTURE.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2005–20525 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before April 11, 2005.

ADDRESSES: Comments should refer to docket number MARAD–2005 20525. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will

be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel VENTURE is:

Intended Use: ''Carriage of passengers for hire.''

Geographic Region: ''East Coast of the United States''.

Dated: March 3, 2005.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–4645 Filed 3–9–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2005–20569]

Receipt of Applications for Temporary Exemption From a Federal Motor Vehicle Safety Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of receipt of applications for temporary exemptions from a Federal motor vehicle safety standard; request for comments.

SUMMARY: We have received applications from two motorcycle manufacturers (Bajaj and Piaggio) for temporary exemptions from a provision in the Federal motor vehicle safety standard on motorcycle controls and displays specifying that a motorcycle rear brake, if provided, must be controlled by a right foot control. The manufacturers ask that we permit the left handlebar as an alternative location for the rear brake control. Each manufacturer states its belief that ''compliance with the standard would prevent the manufacturer from selling a motor vehicle with an overall level of safety at least equal to the overall safety level of nonexempt vehicles.''

We are publishing this notice of receipt of the applications in accordance with our regulations on the subject, and ask for public comment on each application. This publication does not mean that we have made a judgment yet about the merits of the applications.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than April 11, 2005.

ADDRESSES: You may submit your comments [identified by the DOT DMS Docket Number cited in the heading of this document] by any of the following methods:

- *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

You may call the Docket at 202–366–9324. You may visit the Docket from 10 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Mr. Michael Pyne, Office of Crash Avoidance Standards at (202) 366–4171. His FAX number is (202) 493–2739.

For legal issues, you may call Ms. Dorothy Nakama, Office of the Chief Counsel at (202) 366–2992. Her FAX number is (202) 366–3820.

You may send mail to these officials at National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION

I. Background

49 U.S.C. 30113(b) provides the Secretary of Transportation the authority to exempt, on a temporary basis, motor vehicles from a motor vehicle safety standard under certain circumstances. The exemption may be renewed, if the vehicle manufacturer reapplies. The Secretary has delegated the authority for Section 30113(b) to NHTSA.

NHTSA has established regulations at 49 CFR part 555, *Temporary Exemption from Motor Vehicle Safety and Bumper Standards.* Part 555 provides a means by which motor vehicle manufacturers may apply for temporary exemptions from the Federal motor vehicle safety standards on the basis of substantial economic hardship, facilitation of the development of new motor vehicle safety or low-emission engine features, or existence of an equivalent overall level of motor vehicle safety.

Federal Motor Vehicle Safety Standard (FMVSS) No. 123, *Motorcycle controls and displays* (49 CFR 571.123) specifies requirements for the location, operation, identification, and illumination of motorcycle controls and displays, and requirements for motorcycle stands and footrests. Among other requirements, FMVSS No. 123 specifies that for motorcycles with rear wheel brakes, the rear wheel brakes must be operable through the right foot control, although the left handlebar is permissible for motor-driven cycles (*See* S5.2.1, and Table 1, Item 11). Motor-driven cycles are motorcycles with motors that produce 5 brake horsepower or less (*See* 49 CFR 571.3, Definitions.)

On November 21, 2003, NHTSA published in the **Federal Register** (68 FR 65667) a notice proposing two regulatory alternatives to amend FMVSS No. 123. Each alternative would require that for certain motorcycles without a clutch control lever, the rear brakes must be controlled by a lever located on the left handlebar. We also requested comment on industry practices and plans regarding controls for motorcycles with integrated brakes. If this proposed rule is made final, the left handlebar would be permitted as an alternative location for the rear brake control.

II. Applications for Temporary Exemption from FMVSS No. 123

NHTSA has received applications for temporary exemption from S5.2.1 and Table 1, Item 11 from two motorcycle manufacturers: Bajaj USA LLC (Bajaj); and Piaggio & C. S.p.A. and Piaggio USA, Inc (Piaggio). Bajaj asks for new temporary exemptions for the Reo 150–2 (150cc) (for Model Years (MYs) 2005 and 2006) and Reo 150–18 (150cc). Piaggio asks for new temporary exemptions for the Vespa LX (125 and 150 cc) (for MYs 2005–2006), the Vespa GT250 (for MYs 2005–2006), the Piaggio FLY (125 and 150 cc) (for MYs 2005–2006) and the Piaggio BV (250 and 500 cc) (for MYs 2005–2006). All of these motorcycles are considered ''motor scooters.''

The safety issues are identical in the case of all of these motorcycles. Bajaj and Piaggio have applied to use the left handlebar as the location for the rear brake control on their motorcycles whose engines produce more than 5 brake horsepower (all of the motorcycles specified in the previous paragraph).

The frames of each of the motorcycles that are the subject of these applications for temporary exemptions have not been designed to mount a right foot operated brake pedal (*i.e.*, these motor scooters have a platform for the feet and operate only through hand controls). Applying considerable stress to this sensitive pressure point of the motor scooter frame by putting on a foot operated brake control could cause failure due to fatigue, unless proper design and testing procedures are performed.

III. Why the Petitioners Claim the Overall Level of Safety of the Motorcycles Equals Or Exceeds That of Non-Exempted Motorcycles

The applicants have argued that the overall level of safety of the motorcycles covered by their petitions equals or exceeds that of a non-exempted motorcycle for the following reasons. Each manufacturer stated that motorcycles for which applications have been submitted are equipped with an automatic transmission. As there is no foot-operated gear change, the operation and use of a motorcycle with an automatic transmission is similar to the operation and use of a bicycle, and the vehicles can be operated without requiring special training or practice. Each manufacturer provided the following additional arguments:

Bajaj—Bajaj gave the following reasons why the Reo motor scooters for which this exemption is sought provide an overall level of safety exceeding the overall level of safety of nonexempt vehicles. Bajaj stated that an important feature of any brake actuation system, lever or pedal is ''progressivity,'' *i.e.*, the increase of brake actuation force with increasing actuator lever travel. Progressivity of application force is provided by the decrease in the lever ratio as the actuating lever rotates about its pivot and is essential to providing safe, repeatable, and easily interpreted feedback to the rider. Although the foot can apply much more force than can the hand, Bajaj notes that the foot is much less sensitive to travel distance. With the lever/cable operated brake system used on the Reo scooters, there is much more than enough brake actuation force available to the hand ''of even the smallest rider.'' For the rider to have the same perception of degree of brake lever actuation, and thus braking force with the foot pedal systems, much longer travel distances must be provided. Thus, lever ratios for hand levers and foot pedals must be identical.

On a motorcycle's footrest, the brake pedal is positioned directly beneath the rider's braking foot. When braking, the rider simply lowers the braking foot forward without taking his foot off of the footrest. On a scooter, the brake pedal would be positioned projecting from the platform footrest, but the scooter rider places his feet randomly on the platform.

When braking, the rider needs to lift his braking foot off the platform and place it on the scooter's brake pedal. This entails a fraction of time, but it is this fraction which may be crucial in avoiding a crash. Also, when the scooter rider places his foot on the brake pedal, there is no guarantee that he will place it correctly. Incorrect placement of the foot may cause the scooter rider's foot to slip off the brake pedal, making it difficult to brake completely and correctly, and risking an accident. Finally, the scooter rider, to ensure that he places his foot on the brake pedal, might even take his eyes off the road because of the somewhat awkward movement and insecurity which he senses. The use of the left handlebar for the control for the rear brake on scooters is simply more natural for the scooter rider and much more secure because the rider never takes his eyes off the road and is in a much more controlled position to avoid a possible crash.

Bajaj also stated that an additional benefit is provided by the reduced probability of inadvertent wheel locking in an emergency braking situation that comes from increased sensitivity to brake feedback with the hand lever. Because of the necessarily greater physical size of a foot-powered brake pedal, mechanical efficiency is necessarily lower and inertia about the pivot is higher. This results in less effective feedback, or ''feeling'' of the actuation system. For the inexperienced rider especially, loss of control because of rear wheel locking is a common accident mode. The hand lever reduces the possibility of rear wheel locking.

Piaggio—Piaggio stated that brake tests in accordance with FMVSS No. 122 *Motorcycle brake systems,* were conducted on all Vespa and Piaggio models and stated that all models ''easily exceed'' the performance requirements of FMVSS No. 122. Piaggio also stated that Vespa and Piaggio vehicles fully meet the 93/14 EEC brake testing requirements, and enclosed a copy of the brake testing report of the ''Ministero dei Trasporti e della Navigazione'' Italy or TUV/VCA.

Piaggio cited several reasons why it believes the left handlebar rear brake actuation force provides an overall level of safety that equals or exceeds a motorcycle with a right-foot rear brake control. Among these reasons, Piaggio cited the ''state of the art'' hydraulically activated front disc brakes used on Vespa and Piaggio vehicles, as providing more than enough brake actuation force available to the ''hand of even the smallest rider.'' Piaggio explained that because of the greater physical size of a foot-powered brake pedal, mechanical efficiency is lower and inertia about the pivot is higher. This results in less effective feedback, or what Piaggio describes as ''feeling'' of the actuation system. Piaggio asserted that because there is more sensitivity to brake feedback from the hand lever, use of a hand lever reduces the probability of inadvertent wheel locking in an emergency braking situation. Piaggio stated that inexperienced riders may lose control of their motorcycle because of rear wheel locking, and that use of the hand lever reduces the possibility of rear wheel locking.

IV. Why Petitioners Claim an Exemption Would Be in the Public Interest and Would Be Consistent With the Objectives of Motor Vehicle Safety

Each manufacturer offered the following reasons why temporary exemptions for their motorcycles would be in the public interest and would be consistent with the objectives of motor vehicle safety:

Piaggio—Piaggio stated that the motor scooters for which exemptions are being sought are ''safer in operation than non-exempt vehicles currently being operated in the United States and are intended for low speed urban use.'' Piaggio stated its expectation that its vehicles will mostly be used in congested traffic conditions. Piaggio further stated that since the scooters have been designed with rider ergonomics and safety as paramount design parameters, these scooters provide for a much more natural braking response by the rider than do non-exempt vehicles.

Piaggio stated that granting their petition would serve the public interest because their motor scooters provide, in addition to enhanced safety, environmentally clean and fuel efficient, safe, convenient urban transportation. The exhaust, crankcase, and evaporative emissions of the motor scooter's very small engines have been demonstrated to be lower than alternative means of transportation such as large motorcycles. Piaggio concluded that the American consumer will be provided with a broader choice of low-cost, efficient, transportation by the introduction of the Piaggio motor scooters.

Bajaj—Bajaj reiterated Piaggio's statement that the motor scooters for which the exemptions are being sought are ''safer in operation than non-exempt

vehicles currently being operated in the United States and are intended for low speed urban use.'' As did Piaggio, Bajaj stated its expectation that its scooters will mostly be used in congested traffic conditions. Bajaj further stated that since the scooters have been designed with rider ergonomics and safety as paramount design parameters, these scooters provide for a much more natural braking response by the rider than do non-exempt vehicles.

As did Piaggio, Bajaj stated that granting this exemption would serve the public interest because ''these motor scooters provide, in addition to enhanced safety, environmentally clean and fuel efficient, safe, convenient urban transportation.'' Bajaj stated that the exhaust, crankcase, and evaporative emissions of these motor scooters' very small engines have demonstrated to be lower than alternative means of transportation such as large motorcycles. Bajaj concluded that the American consumer will be provided with a broader range of choice of low-cost, efficient, transportation by the introduction of their motor scooters.

V. Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

You may also submit your comments to the docket electronically by logging onto the Dockets Management System Web site at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/Info'' to obtain instructions for filing the document electronically.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under DATES. To the extent possible, we will also consider comments that Docket Management receives after that date.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

1. Go to the Docket Management System (DMS) Web page of the Department of Transportation *(http://dms.dot.gov/).*

2. On that page, click on ''search.''

3. On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were ''NHTSA–1998–1234,'' you would type ''1234.'' After typing the docket number, click on ''search.''

4. On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. Although the comments are imaged documents, instead of word processing documents, the ''pdf'' versions of the documents are word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

How Does the Federal Privacy Act Apply to My Public Comments?

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; pages 19477–78) or you may visit *http://dms.dot.gov*.

Authority: 49 U.S.C. Section 30113; delegations of authority at 49 CFR 1.50 and 501.4.

Issued on: March 4, 2005.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 05–4754 Filed 3–9–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

Advisory Board; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation (SLSDC), to be held at 1:30 p.m. on Wednesday, March 23, 2005, at the St. Catharines Club, 77 Ontario Street, St. Catharines, ON, L2R5J5, in the Cameo Room. The agenda for this meeting will be as follows: Opening Remarks; Consideration of Minutes of Past Meeting; Quarterly Report; Old and New Business; Closing Discussion; Adjournment.

Attendance at the meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact, not later than March 21, 2005, Anita K. Blackman, Chief of Staff, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590; (202) 366–0091.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC, on March 7, 2005.

Albert S. Jacquez,

Administrator.

[FR Doc. 05–4714 Filed 3–9–05; 8:45 am]

BILLING CODE 4910–61–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34625][1]

R.J. Corman Railroad Property, LLC—Lease Exemption—Line of CSX Transportation, Inc.

R.J. Corman Railroad Property, LLC (Railroad Property),[2] a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire by lease a line of railroad of CSX Transportation, Inc. (CSXT), in Louisville, KY, known as the Water Street Lead, extending from the southeast edge of the Mellwood Avenue crossing of the Water Street Lead at or near milepost OTR 4.74 (also known as milepost OOT 1.8) on CSXT's Louisville Terminal Subdivision to the end of track north of River Road, a total distance of approximately 2.4 miles, along with associated industry leads and switch tracks. Railroad Property will also acquire incidental overhead trackage rights between Louisville and Anchorage, KY, on CSXT's LCL Subdivision between the Water Street Lead and milepost 12.49 at HK Tower in Anchorage, a distance of approximately 10.75 miles (the Anchorage Trackage Rights),[3] to allow connection with another Railroad Property line.[4]

This transaction is related to STB Finance Docket No. 34624, *R.J. Corman Railroad Company/Central Kentucky Lines, LLC—Acquisition and Operation Exemption—Lines of R.J. Corman Railroad Property, LLC,* wherein R.J. Corman Railroad Company/Central Kentucky Lines, LLC (RJCC), Railroad Property's corporate affiliate, seeks to sublease from Railroad Property and operate the Water Street Lead and the Anchorage Trackage Rights.

Railroad Property certifies that its projected revenues as a result of this transaction will not result in it becoming a Class II or Class I rail carrier. But, because Railroad Property's projected annual revenues will exceed $5 million, it certified to the Board on December 7, 2004, that, prior to that date, it sent the required notice of the transaction to the national offices of all labor unions representing employees on the affected lines and posted a copy of the notice at the workplace of the employees on the affected lines. *See* 49 CFR 1150.42(e).

Railroad Property stated that it intended to consummate the transaction on February 5, 2005, and RJCC would commence operations on February 7, 2005.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34625, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Ronald A. Lane, 29 North Wacker Drive, Suite 920, Chicago, IL 60606–2832.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: February 15, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–4573 Filed 3–9–05; 8:45 am]

BILLING CODE 4915–01–P

[1] Under the Board's regulations at 49 CFR 1150.42(b), publication in the **Federal Register** of this notice of exemption should have taken place within 30 days of its filing (February 25, 2005). Through inadvertence, however, publication did not occur within that 30-day timeframe. The exemption was, however, effective February 2, 2005—7 days after the notice was filed.

[2] Railroad Property is a member of the R.J. Corman family of nine Class III railroads. Railroad Property was formerly known as R.J. Corman Equipment Company, LLC. The name of that entity was formally changed to R.J. Corman Railroad Property, LLC, and its non-rail assets were transferred to a new noncarrier entity named R.J. Corman Equipment Company. As a result, the new ''Equipment Company'' does not own any railroad assets, and Railroad Property holds the railroad assets and bears the residual common carrier obligations of the ''old'' R.J. Corman Equipment Company, LLC.

[3] According to Railroad Property, it has reached a tentative agreement with CSXT providing for Railroad Property's lease of the Water Street Lead and acquisition of the Anchorage Trackage Rights, and it anticipated that a final agreement would be executed on or before February 5, 2005.

[4] CSXT will also grant Railroad Property operating rights between the Water Street Lead and CSXT's Osborne Yard in Louisville for purposes of effectuating interchange.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34655]

Georgia & Florida RailNet, Inc.—Acquisition and Operation Exemption—Georgia Department of Transportation

Georgia & Florida RailNet, Inc. (GFRR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire and to operate as a rail common carrier over a permanent irrevocable rail easement on property to be acquired by the Georgia Department of Transportation (GDOT) from the City of Willacoochee, GA. The subject track extends from Nashville, GA, at milepost 57.2, to Willacoochee, GA, at milepost 73.8, a distance of 16.6 miles. GFRR states that it has been operating over the track as exempt industrial trackage since it first acquired its lines of railroad in 1999.

GFRR indicates that the parties contemplate consummating the instant transaction on or before April 8, 2005. GFRR certifies that its projected revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier.[1]

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copes of all pleadings, referring to STB Finance Docket No. 34655, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on: John D. Heffner, 1920 N Street, NW., Suite 800, Washington DC 20036.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: March 2, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–4416 Filed 3–9–05; 8:45 am]

BILLING CODE 4915–01–P

[1] GFRR also stated that its projected annual revenues following the transaction will exceed $5 million, but it requested waiver of the 60-day advance labor notice requirements at 49 CFR 1140.42(e). That request is being addressed by the Board in a separate decision. The Board's decision on the request will affect the effective date of the exemption and hence the date on which the transaction could be consummated.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 4, 2005.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 11, 2005, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1465.

Regulation Project Number: PS–54–94 (Final).

Type of Review: Extension.

Title: PS–54–94 (Final) Environmental Settlement Funds ''Classification.

Description: Section 7701 and the regulations there under classify entities for Federal tax purposes as partnerships, associations, and trusts. Section 671 requires a grantor treated as an owner of a portion of a trust to include items in income.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 500.

Estimated Burden Hours Respondent: 4 Hours.

Frequency of response: Other Once.

Estimated Total Reporting Burden: 2,000 hours.

Clearance Officer: R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Christopher Davis,

Treasury PRA Assistant.

[FR Doc. 05–4707 Filed 3–9–05; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Thursday,
March 10, 2005

Part II

Department of Labor

Employee Benefits Security Administration

29 CFR Parts 2520, 2550, et al.

Termination of Abandoned Individual Account Plans and Proposed Class Exemption for Services Provided in Connection With the Termination of Abandoned Individual Account Plans; Proposed Rule and Notice

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Parts 2520, 2550, and 2578

RIN 1210–AA97

Termination of Abandoned Individual Account Plans

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Proposed Regulations.

SUMMARY: This document contains three proposed regulations under the Employee Retirement Income Security Act of 1974 (ERISA or the Act) that, upon adoption, would facilitate the termination of, and distribution of benefits from, individual account pension plans that have been abandoned by their sponsoring employers. The first proposed rule would establish a regulatory framework pursuant to which financial institutions and other entities holding the assets of an abandoned individual account plan can terminate the plan and distribute benefits to the plan's participants and beneficiaries, with limited liability. The second proposed rule provides a fiduciary safe harbor for use in connection with making rollover distributions from terminated plans on behalf of participants and beneficiaries who fail to make an election regarding a form of benefit distribution.

Appendices to these rules contain model notices for use in connection therewith. The third proposed rule would establish a simplified method for filing a terminal report for abandoned individual account plans. These proposed regulations, if adopted, would affect fiduciaries, plan service providers, and participants and beneficiaries of individual account pension plans.

DATES: Written comments on the proposed regulations should be received by the Department of Labor on or before May 9, 2005.

ADDRESSES: Comments should be addressed to the Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, Attn: Abandoned Plan Regulation. Comments also may be submitted electronically to *e-ORI@dol.gov.* All comments received will be available for public inspection at the Public Disclosure Room, N–1513, Employee Benefits Security Administration, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Jeffrey J. Turner or Stephanie L. Ward, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693–8500. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Background

Thousands of individual account plans have, for a variety of reasons, been abandoned by their sponsors. Financial institutions holding the assets of these abandoned plans often do not have the authority or incentive to perform the responsibilities otherwise required of the plan administrator with respect to such plans. At the same time, participants and beneficiaries are frequently unable to access their plan benefits. As a result, the assets of many of these plans are diminished by ongoing administrative costs, rather than being paid to the plan's participants and beneficiaries.

Over the past few years, the Department of Labor's Employee Benefits Security Administration (EBSA) has seen an increase in the number of requests for assistance from participants who are unable to obtain access to the money in their individual account plans. According to these participants, even though a bank or other service provider of the plan may be holding their money, neither the bank nor the participants are able to locate anyone with authority under the plan to authorize benefit distributions.

In some cases, plan abandonment occurs when the sponsoring employer ceases to exist by virtue of a formal bankruptcy proceeding. In other cases, abandonment occurs because the plan sponsor has been incarcerated, died, or simply fled the country. Whatever the causes of abandonment, participants in these so-called ''orphan plan'' or ''abandoned plan'' situations are effectively denied access to their benefits and are otherwise unable to exercise their rights guaranteed under ERISA. At the same time, benefits in such plans are at risk of being significantly diminished by ongoing administrative expenses, rather than being distributed to participants and beneficiaries.

EBSA responded to those participants' requests for assistance with a series of enforcement initiatives, including the National Enforcement Project on Orphan Plans (NEPOP), which began in 1999. NEPOP focuses primarily on identifying abandoned plans, locating their fiduciaries, if possible, and requiring those fiduciaries to manage and terminate (including making benefit distributions to participants and beneficiaries) the plans in accordance with ERISA. When no fiduciary can be found, the Department often requests a federal court to appoint an independent fiduciary to manage, terminate, and distribute the assets of the plan. EBSA had opened 1,354 civil cases involving orphan plans as of September 30, 2004. In the over 800 orphan plan cases closed with results through September 30, 2004, there were approximately 50,000 participants affected and $250 million in assets involved. As of September 30, 2004, there were 372 active cases involving orphan plans.

During 2002, the ERISA Advisory Council created the Working Group on Orphan Plans to study the causes and extent of the orphan plan problem. On November 8, 2002, after public hearings and testimony, the Advisory Council issued a report, entitled Report of the Working Group on Orphan Plans,[1] concluding that the problems posed by abandoned plans are very serious and substantial for plan participants, administrators, and the government. In particular, the Report states that ''[p]lan participants may suffer economic hardship as a result of their inability to obtain a distribution from an orphan plan; plan service providers may be besieged with requests for distributions, although unauthorized to act; and the government may be forced to handle the termination of hundreds or thousands of plans that have been abandoned.'' Although the Advisory Council's Report estimated that abandoned plans currently represent only about two percent of all defined contribution plans and less than one percent of total plan assets for such plans, the Report also indicated that the orphan plan problem may grow in difficult economic times.

Taking into account the problem of abandoned plans and the Department's efforts to date, the Advisory Council generally recommended measures (whether regulatory, legislative, or both) to encourage service providers to voluntarily terminate abandoned plans and distribute assets to participants and beneficiaries. Specific recommendations of the Advisory Council included new regulations setting forth criteria for determining when a plan is abandoned, procedures for terminating abandoned plans and distributing assets, and rules defining who may terminate and wind up such plans.

The Department carefully considered the recommendations of the Advisory Council, as well as the comments of the

[1] A copy of the Report can be found at *http://www.dol.gov/ebsa/publications/AC_110802_report.html.*

various parties testifying at the public hearing, in developing the proposed regulations contained in this document, which are being promulgated by the Department pursuant to its authority in sections 403(d)(1), 404(a), and 505 of ERISA.

B. Overview of Proposed Abandoned Plan Regulation—29 CFR 2578.1

Generally, this proposed regulation, upon adoption, would establish standards and procedures under title I of ERISA that will facilitate the voluntary, safe and efficient termination of abandoned plans, increasing the likelihood that participants and beneficiaries receive the greatest retirement benefit under the circumstances. Specifically, the proposed regulation establishes standards for determining when a plan may be considered abandoned and deemed terminated, procedures for winding up the affairs of the plan and distributing benefits to participants and beneficiaries, and guidance on who may initiate and carry out the winding-up process.

1. Qualified Termination Administrator

All determinations of plan abandonment, as well as related activities necessary to the termination and winding up of an abandoned individual account plan, under this regulation, may be performed only by a ''qualified termination administrator'' or ''QTA.'' In this regard, paragraph (g) of the proposal provides that a person or entity can qualify as a termination administrator only if it, first, is eligible to serve as a trustee or issuer of an individual retirement plan that is within the meaning of section 7701(a)(37) of the Internal Revenue Code (Code)[2] and, second, if it holds assets of the plan on whose behalf it will serve as the QTA. While the Department believes that a person undertaking to terminate and wind up an abandoned individual account plan should, for purposes of the relief provided by the regulation, be subject to Federal standards and oversight, the Department invites public comment on whether, and how, the definition of a ''qualified termination administrator'' might be expanded to include other parties.[3] Comments on this subject should address financial, operational, regulatory, and other safeguards on which ''QTA'' status might be conditioned to protect the interest of the plan's participants and beneficiaries.

2. Finding of Plan Abandonment

Paragraph (b) of proposed § 2578.1 defines when a plan is abandoned for purposes of the regulation. In this regard, paragraph (b) provides that a QTA may find an individual account plan to be abandoned when there have been no contributions to (or distributions from) a plan for a continuous 12-month period, or where facts and circumstances known to the QTA (such as a plan sponsor's liquidation under title 11 of the United States Code, or communications from plan participants and beneficiaries regarding the plan sponsor, benefit distributions, or other plan information) suggest that the plan is or may become abandoned. See § 2578.1(b)(1)(i). The latter standard is intended to permit immediate findings of abandonment where known facts and circumstances clearly obviate the need for 12 consecutive months of plan inactivity. The testimony of various service providers (such as banks, insurance companies, and mutual funds) makes it clear that they frequently acquire knowledge of abandonment, even though contributions or distributions may have occurred within the past 12 months. For example, in some cases, employees of defunct businesses appear personally or call the bank requesting distributions. Under these circumstances, requiring a 12-month wait before taking some action appears to be of little or no benefit to the plan participants, and possibly even harmful to their interests.

A second condition to a finding of abandonment is that the QTA must, following reasonable efforts to locate or communicate with the known plan sponsor, determine that the plan sponsor no longer exists, cannot be located, or is unable to maintain the plan. See § 2578.1(b)(1)(ii). For this purpose, the proposal describes specific steps that would constitute ''reasonable efforts'' by a QTA to locate or communicate with the plan sponsor. See § 2578.1(b)(3) and (4).[4] Among other things, a reasonable effort would include furnishing notice to the plan sponsor of the QTA's intent to terminate the sponsor's individual account plan and distribute benefits to the plan's participants and beneficiaries. The proposal describes other information that must be contained in the notice to the plan sponsor. To facilitate compliance with this notification requirement, the Department has developed a model notice to plan sponsors for use by QTAs. This model notice, the use of which would be voluntary on the part of the QTA, is contained in Appendix A to the proposed rule.

With respect to the phrase ''unable to maintain the plan'' in paragraph (b)(1)(ii), the testimony given to the Advisory Council's Working Group suggests that imprisonment is perhaps the most common reason why a plan sponsor might be considered unable to maintain its plan. This phrase, however, should not be understood to be so limited in nature. Rather, the Department intends for this phrase to encompass physical, mental, legal, financial, or other impediments that, in the judgment of the QTA, prevent the sponsor from making contributions to and administrating the plan in accordance with the documents and instruments governing the plan.

3. Deemed Terminations

Following a QTA's finding that a plan has been abandoned, the plan will be deemed to be terminated under the proposal on the ninetieth (90th) day following the date on which the QTA provides notice of its determination of plan abandonment and its election to serve as a QTA to the U.S. Department of Labor. See § 2578.1(c). The furnishing of notice to the Department, in conjunction with the 90-day delay in the deemed termination of the plan, is intended to afford the Department an opportunity to review the circumstances of the proposed plan termination and, if appropriate, object to the termination. If the Department objects to a termination, the plan will not be deemed terminated

[2] Section 7701(a)(37) defines the term individual retirement plan to mean an individual retirement account described in section 408(a) of the Code and an individual retirement annuity described in section 408(b) of the Code.

[3] The subject regulation is not intended to limit, in any way, the ability of other parties who may be acting pursuant to court appointment, court order, or otherwise acting on behalf of the sponsor of the plan, to terminate and wind up the affairs of a pension plan, without regard to whether the plan is considered abandoned under this regulation. The proposed definition of ''qualified termination administrator'' does not include such parties because they are empowered to take steps to terminate and wind up the affairs of a plan without regard to any authority that might be conferred by the regulation.

[4] The steps described in paragraphs (b)(3) and (4) of the proposed regulation are not intended to be the exclusive method by which a QTA can satisfy the standard of reasonableness in paragraph (b)(1) of the regulation. These steps represent merely what the Department considers to be an appropriate level of effort to locate or communicate with the plan sponsor, given the unique circumstances surrounding abandoned plans, the other requirements and safeguards in the regulation relating to findings of abandonment, and the cost associated with other generally available methods of locating missing plan sponsors. The Department, nevertheless, invites public comment on whether, and how, these steps might be augmented to further reduce the possibility that a QTA might err in concluding that a plan has been abandoned, when in fact the plan sponsor can be located.

until such time as the Department informs the QTA that the Department's concerns have been addressed. See § 2578.1(c)(2)(i).

The proposal would also permit (but does not require) the Department, in its sole discretion, to waive some or all of the 90-day waiting period described above. This might happen, for example, in the case of plans with few participants and few assets or if the facts relating to the abandonment are not very complicated, and if it is reasonably apparent to the Department that the proposed termination would be unlikely to put the participants' interests at risk. If the Department were to waive some or all of the 90-day period in a particular case, the plan involved would be deemed terminated when the Department furnished notification of the waiver to the QTA. See § 25781(c)(2)(ii).

Paragraph (c)(3) of § 2578.1 provides that the above referenced notice to the Department must be signed and dated by the QTA and include certain information about the QTA and the abandoned plan. Information about the QTA includes the name, EIN, address and phone number of the QTA, a description of the steps it took to locate or communicate with the known plan sponsor, a statement that it elects to terminate and wind up the plan, and an itemized estimate of any expenses the QTA expects to pay (including to itself) as part of the process contemplated by the proposed regulation. The notice must also identify whether the QTA or its affiliate is, or within the past 24 months has been, the subject of an investigation, examination, or enforcement action by specified federal authorities. Information about the plan includes the name of the plan, an estimate of the number of participants in the plan, an estimate of total assets of the plan held by the QTA, identification of known service providers of the plan, and the last known address of the plan sponsor. The Department believes that the required information will be sufficient to allow the Department to assess whether it should object to a proposed termination.

To facilitate compliance with this notification requirement, the Department has developed a model notice for use by QTAs in notifying the Department of plan abandonment. This model notice, the use of which would be voluntary on the part of QTAs, is contained in Appendix B to the proposed rule.

The Department is considering whether this notification, as well as the notification required by § 2578.1(d)(2)(viii) of the proposed regulation, should be required to be submitted to the Department electronically. The Department, therefore, specifically invites comment on whether, and to what extent, the Department should either mandate or provide for the electronic submission of these notices and what, if any, cost or cost savings might result to plans because of either such a requirement or such an opportunity to submit electronically.

4. Winding Up the Affairs of the Plan

A number of witnesses appearing before the Advisory Council's Working Group on Orphan Plans indicated that they would be more likely to participate in a formal process for terminating abandoned plans if the Department established specific guidelines on how to wind up such plans. Paragraph (d) of § 2578.1 is intended to provide that guidance. Paragraph (d)(1) of the proposed regulation prescribes the general authority of the QTA to take steps that are necessary or appropriate to wind up the affairs of the plan and distribute benefits to the plan's participants and beneficiaries.

Paragraph (d)(2) of § 2578.1 sets forth specific steps that a QTA must take and, with respect to most such steps, specifies the standards applicable to carrying out the particular activity (*e.g.,* gathering plan records, engaging service providers, paying reasonable expenses, etc.). The prescribed standards are intended to both clarify and limit the responsibilities and liability of QTAs in connection with the termination and winding up of an abandoned plan.

Paragraph (d)(2)(i) of the proposal deals with locating and updating plan records. Several witnesses appearing before the Advisory Council's Working Group identified incomplete or inaccurate plan records as a possible impediment to winding up the affairs of abandoned plans. In responding to this testimony, the Advisory Council's Report recommended that the Department provide guidance on the extent to which the records of abandoned plans must be updated before benefits may be distributed. Paragraph (d)(2)(i)(A) of the proposal provides that the QTA shall undertake reasonable and diligent efforts to locate and update plan records necessary to determine benefits payable under the plan. In recognition of the fact that there will be circumstances where locating, recreating or updating plan records, may, even when possible, be so costly that the plan's participants and beneficiaries will be better off with benefits being determined on less than complete or accurate records, the proposal, at paragraph (d)(2)(i)(B), provides that the QTA shall not have failed to act reasonably and diligently merely because it determines in good faith that updating the records is either impossible or involves significant cost to the plan in relation to the total assets of the plan.

Paragraph (d)(2)(ii) of the proposal provides that the QTA must use reasonable care in calculating the benefits payable based on the plan records assembled. This provision, in conjunction with paragraph (d)(2)(i), is intended to ensure accuracy for the greatest number of distributions, while making it clear that the Department does not expect a QTA to assemble perfect records in every case.

Testimony before the Advisory Council's Working Group indicated a need to address whether and under what circumstances plan assets could be utilized to compensate service providers as part of the termination and winding up process. Paragraphs (d)(2)(iii) and (iv) of the proposal are intended to address the issues relating to the engagement of service providers and the payment of expenses in connection with the termination and winding up of an abandoned plan.

Paragraph (d)(2)(iii) of the proposal provides the QTA with the authority to engage, on behalf of the plan, such service providers as are necessary for the QTA to wind up the affairs of the plan and distribute benefits to the plan's participants and beneficiaries. Paragraph (d)(2)(iv)(A) makes clear that reasonable expenses incurred in connection with the termination and winding up of the plan may be paid from plan assets.

Paragraph (d)(2)(iv)(B) provides guidance concerning when expenses incurred in connection with the termination and winding up of an abandoned plan will be considered ''reasonable.'' In this regard, the Department notes that the guidance provided by that paragraph applies solely for purposes of determining the reasonableness of expenses incurred in connection with the exercise of a QTA's authority under this regulation to terminate and wind up an abandoned plan. Specifically, paragraph (d)(2)(iv)(B) provides that an expense shall be considered reasonable if: the expense is for services necessary to wind up the affairs of the plan and distribute benefits to the plan's participants and beneficiaries; such expense is consistent with industry rates for the provided services, based on the experience of the QTA; such expense is not in excess of rates charged by the QTA (or affiliate) to other customers for comparable services, if

the QTA (or affiliate) provides comparable services to other customers; and the payment of the expense would not constitute a prohibited transaction or is otherwise exempt by virtue of an individual or class exemption from ERISA's prohibited transaction rules.

The reference to ''industry rates'' and ''based on the experience of the QTA'' in paragraph (d)(2)(iv)(B)(2)(i) is intended to enable QTAs, who possess knowledge about the services needed for a plan termination and industry rates for such or similar services, but who do not perform these services for plans, to engage or retain service providers without going through a potentially time-consuming and costly bidding process. By permitting QTA's to rely on their own industry expertise, we believe QTAs can minimize plan termination costs and, thereby, maximize the benefits payable to a plan's participants and beneficiaries.

The rule in paragraph (d)(2)(iv)(B)(2)(ii) is intended to augment the protections provided under the industry rates standard discussed above. Under this rule, if a QTA performs termination and winding up services for customers other than abandoned plans under this regulation, the fees it charges the other customers for such services shall serve as limits for fees for comparable services needed by the abandoned plans.

The Department anticipates that QTAs may wish to be compensated for services they or an affiliate render in connection with the termination and winding up of an abandoned plan. In the absence of an exemption, however, a QTA's decision to compensate itself from plan assets for such services would constitute a prohibited transaction under section 406 of ERISA, thereby making such payment unreasonable under this regulation. See § 2578.1(d)(2)(iv)(B)(3). To address this problem, the Department is publishing in the Notice section of today's Federal Register a proposed class exemption pursuant to which QTAs or their affiliates can be reimbursed or compensated for services performed pursuant to this regulation, following its adoption.

In addition to locating and updating plan records, calculating benefits and engaging service providers, the QTA shall, as one of its duties in winding up the affairs of a plan, notify each of the plan's participants and beneficiaries concerning the termination of their plan. In general, paragraph (d)(2)(v)(A) provides that the notice furnished to participants and beneficiaries include: a statement that the plan has been terminated; a statement of the participant's or beneficiary's account balance and a description of the distribution options available under the plan; a request for the participant or beneficiary to make an election with respect to the form of distribution; a statement explaining that in the event the participant or beneficiary fails to make an election his or her account balance will be rolled over into an individual retirement plan (*i.e.,* individual retirement account or annuity) or other account (in the case of a non-spousal beneficiary) and invested in an investment product that is designed to preserve principal and provide a reasonable rate of return and liquidity; and the name, address, and telephone number of a person to contact with questions or for additional information.[5] Nothing in the regulation would preclude a QTA from also including its e-mail address in this notice.

Appendix C to this section contains a model notice to participants and beneficiaries. The model allows for inclusion of plan-specific information, including a description of the process for electing a form of distribution. While the Department intends that use of an appropriately completed model notice would be considered compliance with the content requirements of paragraph (d)(2)(v)(A) of the proposed regulation, the Department does not intend to require its use and anticipates a variety of other notices could satisfy the requirements of the regulation.

This notice shall be furnished to the last known address of participants and beneficiaries in accordance with the requirements of 29 CFR 2520.104b–1(b)(1). See § 2578.1(d)(2)(v)(B)(1). If the notice is returned undelivered to the QTA, however, the QTA, consistent with the duties of a fiduciary under section 404(a)(1) of ERISA, shall take steps to locate and notify the missing participant or beneficiary before distributing benefits. See § 2578.1(d)(2)(v)(B)(2). A QTA may ensure compliance with this standard by following previous fiduciary guidance issued by the Department in the context of missing participants. See EBSA Field Assistance Bulletin No. 2004–02 (Sept. 30, 2004).

Paragraph (d)(2)(vi) of the proposal addresses distributions of benefits to participants and beneficiaries. The general rule under that paragraph is that a QTA is required to distribute benefits in accordance with elections of participants or beneficiaries. See § 2578.1(d)(2)(vi)(A). In the absence of a timely election by a participant or beneficiary, however, the individual's benefits must be directly rolled over to an individual retirement plan (or other account in the case of a non-spousal beneficiary) in accordance with proposed 29 CFR 2550.404a–3. See § 2578.1(d)(2)(vi)(B).

The last step in the winding-up process is for the QTA to notify the Department that all benefits have been distributed in accordance with the regulation. Paragraph (d)(2)(viii) of the proposal sets forth the content requirements of this notification, which is referred to in the regulation as the final notice. Among other things, the final notice is required to include: A statement that the plan has been terminated and all assets held by the QTA have been distributed to the plan's participants and beneficiaries on the basis of the best available information; a statement that the special terminal report meeting the requirements of proposed 29 CFR 2520.103–13 is attached to the final notice; a statement that plan expenses were paid out of plan assets by the QTA in accordance with applicable federal law; and, in cases where the QTA paid itself 20 percent or more than it had estimated it would be paying itself, a statement acknowledging and explaining the overrun.

Appendix D to this section contains a model final notice. The model allows for inclusion of plan-specific information. While the Department intends that use of an appropriately completed model notice would be considered compliance with the content requirements of paragraph (d)(2)(viii) of the proposed regulation, the Department does not intend to require its use and anticipates a variety of other notices could satisfy the requirements of the proposed regulation.

[5] A QTA is not required under this regulation to select an individual retirement plan provider (or other account provider in cases of non-spousal beneficiaries) as of the date it furnishes to participants and beneficiaries the notice described in paragraph (d)(2)(v) of the proposal. The Department, however, believes that efficient QTAs routinely will know who, even at that early juncture, eventually will be the individual retirement plan (or other account) provider, particularly in those cases where the QTA has selected, or intends to select, itself (or an affiliate) to be the individual retirement plan (or other account) provider. Accordingly, in situations in which a QTA, at the time the notice in paragraph (d)(2)(v) is furnished, has selected or knows who it will select to provide individual retirement plan services (or other account services in the case of non-spousal beneficiaries), such notice also must include an identification of the individual retirement plan (or other account) provider and, if known, a statement of the fees, if any, that will be paid from the participant or beneficiary's individual retirement plan (or other account in the case of non-spousal beneficiaries), such as establishment or maintenance fees. See § 2578.1(d)(2)(v)(A)(5)(ii)&(iii); § 2550.404a–3(e)(v)&(vi).

5. Plan Amendments

Paragraph (d)(3) of section 2578.1 provides that the terms of the plan shall, for purposes of title I of ERISA, be deemed amended to the extent necessary to allow the QTA to wind up the plan in accordance with this regulation. The purpose of this provision is to enable QTAs to avoid the potentially significant costs attendant to amending the plan to permit what is otherwise permissible under this regulation. For example, a QTA may, without regard to plan terms, engage or replace service providers and pay expenses attendant to winding up and terminating the plan from plan assets.

6. Limited Liability of Qualified Termination Administrator

In a further effort to limit the liability of a QTA, paragraph (e) of the proposed regulation provides that, if a QTA carries out its responsibilities with regard to winding up the affairs of the plan in accordance with paragraph (d)(2) of the regulation, the QTA is deemed to satisfy any responsibilities it may have under section 404(a) of ERISA with respect to such activity, except for selecting and monitoring service providers. In addition, with respect to its selection and monitoring duties, if the QTA selects and monitors service providers consistent with the prudence requirements in part 4 of ERISA, the QTA will not be held liable for the acts or omissions of the service providers with respect to which the QTA does not have knowledge.

7. Internal Revenue Service

The Advisory Council's Working Group on Orphan Plans recommended that the Department coordinate with the Internal Revenue Service (IRS) in the development of this proposed regulation in order to prevent participants and beneficiaries of abandoned plans, insofar as possible under the Code, from losing the favorable tax treatment otherwise accorded distributions from qualified plans. The Department, therefore, has conferred with representatives of the IRS regarding the qualification requirements under the Code as applied to plans that would be terminated pursuant to this proposed regulation. The IRS has advised the Department that it will not challenge the qualified status of any plan terminated under this regulation or take any adverse action against, or seek to assess or impose any penalty on, the QTA, the plan, or any participant or beneficiary of the plan as a result of such termination, including the distribution of the plan's assets, provided that the QTA satisfies three conditions. First, the QTA, based on plan records located and updated in accordance with paragraph (d)(2)(i) of the proposed regulation, reasonably determines whether, and to what extent, the survivor annuity requirements of sections 401(a)(11) and 417 of the Code apply to any benefit payable under the plan.[6] Second, each participant and beneficiary has a nonforfeitable right to his or her accrued benefits as of the date of deemed termination under paragraph (c)(1) of the proposed regulation, subject to income, expenses, gains, and losses between that date and the date of distribution. Third, participants and beneficiaries must receive notification of their rights under section 402(f) of the Code. This notification should be included in, or attached to, the notice described in paragraph (d)(2)(v) of the proposed regulation. Notwithstanding the foregoing, the IRS reserves the right to pursue appropriate remedies under the Code against any party who is responsible for the plan, such as the plan sponsor, plan administrator, or owner of the business, even in its capacity as a participant or beneficiary under the plan.

C. Overview of Proposed Safe Harbor for Rollovers From Terminated Individual Account Plans—29 CFR 2550.404a–3

Under proposed § 2578.1, as discussed above, if a participant or beneficiary fails to elect a form of benefit distribution, the QTA is required to distribute that person's benefits in the form of a direct rollover into an individual retirement plan (or other account in the case of a rollover on behalf of a non-spousal beneficiary). See § 2578.1(d)(2)(vi)(B). In a different context, the Department previously took the position that the selection of IRA providers and investments for purposes of a default rollover pursuant to a plan provision is a fiduciary act.[7] The Department, therefore, is concerned that this position, in the absence of guidance regarding ERISA's fiduciary standards in the context of directly rolling over benefits under proposed § 2578.1, could make potential QTAs apprehensive about assuming the status of a QTA, solely for fear of fiduciary liability in connection with such rollovers.

Accordingly, the Department is proposing a fiduciary safe harbor, at 29 CFR 2550.404a–3, for QTAs that roll over distributions pursuant to proposed § 2578.1(d)(2)(vi)(B). This fiduciary safe harbor was modeled on the fiduciary safe harbor recently adopted by the Department for the automatic rollover of mandatory distributions described in section 401(a)(31)(B) of the Code.[8] If the conditions of the safe harbor are met, a QTA would be deemed to have satisfied the requirements of section 404(a) of the Act with respect to both the selection of an individual retirement plan provider (or other account provider in the context of a rollover on behalf of a non-spousal beneficiary) and the investment of the distributed funds.

The safe harbor has three conditions, set forth in paragraph (d) of the proposed regulation. First, each distribution must be rolled over into an individual retirement plan, as defined in section 7701(a)(37) of the Code or, in the case of a distribution on behalf of a non-spousal distributee,[9] to an account (other than an individual retirement plan) maintained by an entity that is eligible to serve as a trustee or issuer of an individual retirement plan. Second, in connection with each such distribution, the QTA and the individual retirement plan provider (or other account provider in the context of a rollover on behalf of a non-spousal beneficiary) must enter into a written agreement that provides that: Rolled-over funds must be invested in an investment product designed to preserve principal and provide a reasonable rate of return, whether or not such return is guaranteed, consistent with liquidity; the investment product selected for the rolled-over funds shall seek to maintain a stable dollar value equal to the amount invested in the product by the individual retirement plan (or other account in the context of a rollover on behalf of a non-spousal beneficiary); fees and expenses attendant to the individual retirement plan (or other account in the context of a rollover on behalf of a non-spousal beneficiary), including investments of such plan, do not exceed certain limits; and, the participant or beneficiary on whose behalf the QTA makes a direct rollover shall have the right to enforce the terms of the contractual agreement establishing the individual retirement plan (or other account in the context of a rollover on behalf of a non-spousal beneficiary), with regard to his or her

[6] These Code sections, and regulations thereunder, set forth qualified joint and survivor and qualified preretirement survivor annuity requirements and related notice, election and consent rules.

[7] See Rev. Rul. 2000–36, n. 1, where the Department stated that the selection of an IRA trustee, custodian or issuer and IRA investment for purposes of a default rollover pursuant to a plan provision would constitute a fiduciary act under ERISA; see also EBSA Field Assistance Bulletin 2004–02 (Sept. 30, 2004).

[8] See 69 FR 58018 (Sept. 28, 2004).

[9] See 26 CFR 1.402(c)–2, Q&A—12.

rolled-over funds, against the individual retirement plan or other account provider. Third, if the QTA designates itself as the transferee of rollover proceeds, such designation must be exempt from the restrictions imposed by section 406 of ERISA pursuant to section 408(a) of ERISA.[10]

The Department, in developing this safe harbor for QTAs of abandoned plans, observed strong similarities between QTAs of abandoned plans and fiduciaries of terminated defined contribution plans generally. In particular, in either situation, the QTA or fiduciary will find that the winding-up process may be severely complicated or even postponed indefinitely if participants or beneficiaries fail to affirmatively elect a form of distribution. In such cases, the responsible decision maker is faced with a choice of either halting the winding-up process or finishing it in the absence of an affirmative direction from a participant or beneficiary regarding the distribution of his or her benefits.

The Department, therefore, has concluded that the sound administration of ERISA is furthered by not limiting the applicability of § 2550.404a–3 to QTAs. Rather, the Department is proposing to make available safe harbor relief to fiduciaries in connection with rollover distributions from any terminated defined contribution plan, without regard to whether the particular plan is considered abandoned pursuant to proposed section 2578.1, whenever the participant or beneficiary on whose behalf the rollover is being made fails to affirmatively elect a form of distribution.

Of course, as with abandoned plans, the safe harbor is not available unless plan fiduciaries satisfy certain notification requirements before making a rollover distribution. See § 2550.404a–3(e).[11] To facilitate compliance with this notice requirement, the Department has developed a model notice for use by fiduciaries to notify participants and beneficiaries of their distribution options and to request that each such participant or beneficiary elect a form of distribution. This model notice, the use of which would be voluntary, is contained in the appendix to this proposed regulation.

Finally, the Department, after consulting with the IRS, has decided to limit the applicability of the fiduciary safe harbor to rollovers from tax qualified plans. Specifically, with respect to rollover distributions from plans that are not abandoned plans under section 2578.1, such plans must be in compliance with the requirements of section 401(a) of the Code at the time of each rollover distribution. See § 2550.404a–3(a)(2)(ii). In the context of a rollover distribution from an abandoned plan, the safe harbor is available if such plan is intended to be maintained as a tax-qualified plan in accordance with the requirements of section 401(a) of the Code, even if such plan is not operationally qualified at the time of a rollover distribution pursuant to section 2578.1. See § 2550.404a–3(a)(2)(i). The Department invites comments on whether the safe harbor should be made available to fiduciaries for rollovers from arrangements described in section 403 of the Code, where such arrangements are covered by title I of ERISA.

D. Overview of Proposed Reporting Regulation—29 CFR 2520.103–13

Several witnesses before the Advisory Council's Working Group on Orphan Plans testified that, in order to be successful, a program for terminating and winding up abandoned plans must include relief from the annual reporting requirements in section 103 of ERISA. In this regard the Advisory Council recommended the creation of special reporting rules for abandoned plans, placing emphasis on relief from the requirement to engage an independent qualified public accountant. The Council also recommended that the Department make clear the extent to which the QTA, rather than the plan administrator (within the meaning of section 3(16) of ERISA), would be responsible for missing or deficient annual reports for plan years preceding the year in which the plan is deemed terminated.

The Department is proposing to add to part 2520 of the Code of Federal Regulations a new section 2520.103–13 to provide annual reporting relief relating to abandoned plan filings by QTAs. This proposed regulation addresses the content, timing, and method of filing rules for the reporting requirement imposed on qualified termination administrators pursuant to proposed 29 CFR 2578.1(d)(2)(vii). In addition to basic identifying information of the plan and QTA, the report would, as proposed, be required to specify the plan's total assets as of a particular date, termination expenses paid by the plan, and the total amount of distributions, along with other relevant information. This report would be required to be filed within 2 months after the month in which all of the plan's affairs have been completed (except for the requirements in 29 CFR 2578.1(d)(2)(vii) and (viii)). This report would be required to be filed on the Form 5500 in accordance with the special instructions for abandoned plans terminated pursuant to 29 CFR 2578.1. The filing of this report with the Department would be accomplished when a report meeting the requirements of proposed section 2520.103–13 is furnished to the Department as an attachment to the notice described in section 2578.1(d)(2)(viii).

Paragraph (e) of proposed 2520.103-13 is intended to address concerns regarding the responsibilities of QTAs under part 1 of title I of ERISA. This paragraph clarifies that a QTA is not subject to the generally applicable reporting requirements in part 1 of title I of ERISA, and that the filing of a report in accordance with this section does not relieve the plan's administrator (within the meaning of section 3(16) of ERISA) of any obligation it has under ERISA. Similarly, any failure by the QTA to meet the requirements of 29 CFR 2520.103–13 does not for that reason make the QTA subject to the requirements of part 1 of title I of ERISA, although it would prevent compliance with section 2578.1.

E. Effective Date

The Department is considering making these three proposed regulations, *i.e.,* sections 2578.1, 2550.404a–3, and 2520.103–13, effective 60 days after the date of publication of final rules in the **Federal Register**. The Department invites comments on whether the final regulations should be made effective on an earlier or later date.

[10] Section 406 of the Act prohibits certain transactions involving plans and parties in interest with respect to those plans. Pursuant to section 408(a) of ERISA, the Department may grant an exemption from the restrictions imposed by section 406 of ERISA upon finding that such exemption is administratively feasible, in the interests of the plan and its participants and beneficiaries and protective of the rights of participants and beneficiaries. The Department is publishing a proposed class exemption in today's **Federal Register** that is intended to deal with prohibited transactions resulting from a QTA's selection of itself as the provider of an individual retirement plan (or other account provider in the context of a rollover on behalf of a non-spousal beneficiary) and/or issuer of an investment held by such plan.

[11] The Department notes that the notice requirement in paragraph (e) of the proposed safe harbor does not relieve a plan administrator of its obligation to notify participants or beneficiaries of their rights under section 402(f) of the Code. Section 402(f) notification should be included in, or attached to, the notice described in paragraph (e) of this proposed safe harbor.

F. Regulatory Impact Analysis

Summary

This regulatory initiative consists of three proposed regulations. One proposal, entitled Rules and Regulations for Abandoned Plans, establishes procedures and standards for the termination of, and distribution of benefits from, an abandoned pension plan. The second proposal, entitled Safe Harbor for Rollovers From Terminated Individual Account Plans, provides relief from ERISA's fiduciary responsibility rules in connection with a rollover distribution on behalf of a missing or unresponsive plan participant. The last proposal, entitled Special Terminal Report for Abandoned Plans, provides annual reporting relief for terminated abandoned plans.

Rules and Regulations for Abandoned Plans (29 CFR 2578.1)

The standards and procedures set forth in this proposed regulation are intended to facilitate the voluntary, safe, and efficient termination of individual account plans that have been abandoned and to increase the likelihood that participants and beneficiaries will receive the greatest retirement benefit practicable under the circumstances. Participants and beneficiaries that had previously been denied access to their benefits because there was no authority willing or able to assume responsibility for the abandoned plan will be able to direct the QTA concerning the distribution of their account balances as permitted under the terms of the plan and federal regulations.

Without this regulation, plans that have been abandoned by a plan sponsor might eventually be terminated through government enforcement or other legal action. However, information gathered by the Advisory Council's Working Group suggests that more often the assets of abandoned plans continue to be diminished by ongoing administrative expenses at the same time that participants and beneficiaries are denied access to their benefits. The Department assumes for purposes of its analysis of the impact of these proposed rules that most plans that would currently meet the criteria for a finding of abandonment would remain abandoned without the establishment of a regulatory framework and specific standards and procedures such as those described in this proposed regulation. It is also assumed that an accumulated number of plans meeting the criteria for abandonment would be terminated and wound up pursuant to these rules, and that a smaller number of plans would become abandoned and terminated in future years.

Although certain costs will be incurred and paid from plan assets in the course of the termination and winding up of abandoned plans pursuant to this regulation, the qualitative and quantitative benefits of the regulation are expected to be both numerous and substantial. The most significant qualitative benefit of the regulation will arise from the facilitation of the voluntary termination of abandoned plans. It is assumed, for purposes of cost estimates presented here, that all fees and expenses for terminating an abandoned plan, to the extent that they are reasonable, will be charged to the plan.

Absent the proposed regulation, the persons or other entities holding assets of abandoned plans would not in most cases have the authority or incentive to see that such plans are terminated and that benefits are distributed to participants and beneficiaries. The specificity of the proposed standards and procedures, along with provisions that limit the liability of the QTA in certain circumstances, will support the rights of participants and beneficiaries by establishing the authority and incentive for a QTA to wind up the affairs of an abandoned plan. The requirements pertaining to the timing and content of notices to the Department and to the participants and beneficiaries, as well as guidance that addresses the obligations of the QTA with respect to the condition of plan records, selection and monitoring of service providers, payment of fees and expenses, and requirements for plan amendments and continued tax qualification, will serve to protect the benefits of affected participants and beneficiaries in the course of the termination and winding up of abandoned plans.

The termination of plans that would otherwise remain abandoned also has quantitative economic implications. The termination of these plans in accordance with the regulation would serve to maximize the benefits ultimately payable to participants and beneficiaries in two important ways. First, termination would preclude the ongoing payment of administrative expenses that diminish assets but only minimally contribute to the management of the plan. In addition, the specific standards and procedures of the proposed regulation would limit the costs that would otherwise be associated with plan termination. Each of these in turn would moderate the extent to which individual account balances of the abandoned plan would be drawn upon for plan administration.

Costs will be incurred and paid from plan assets to wind up the affairs of abandoned plans. However, these costs are meaningful only in the context of the savings of administrative expenses that would otherwise have continued to be paid indefinitely absent the termination. An assessment of the net effect of the termination cost and administrative savings is complicated by the fact that the cost is incurred once, while the savings would occur repeatedly in future years of what would otherwise be continuing abandonment.

In analyzing the costs and potential savings, and relying on available data and certain assumptions described in detail later in this discussion, the Department compared the aggregate projected termination costs of an estimated number of potentially abandoned plans with the present value of future ongoing administrative costs for those plans. This comparison shows that while the termination costs exceed administrative savings in the year of termination, by the end of the next year and thereafter, the termination has prevented the payment of a significantly greater aggregate expense, resulting in a substantial preservation of retirement benefits.

In the absence of direct measures for the number of abandoned plans, the Department, based on Form 5500 data and certain assumptions, estimates that there are approximately 4,000 abandoned plans at present.[12] Assuming 4,000 abandoned plans, and based on Form 5500 data and certain assumptions concerning ordinary plan termination expenses and typical annual administrative expenses, the Department estimates that the aggregate termination cost for those abandoned plans amounts to $8.4 million, while one year of ongoing administrative costs would amount to $7.7 million. However, by the end of the next following year, termination will have had the effect of saving $6.6 million. In other words, the net benefit in administrative cost savings for facilitating termination of abandoned plans would be $6.6 million for plans that would have remained abandoned for two years. If these plans remained abandoned for five years, it is estimated that the net benefit of facilitating termination would exceed $27 million.

[12] Testimony before the Advisory Council suggests that the number of abandoned plans might be nearer to 2%. If this witness's experience is representative, approximately 11,700 plans could be considered abandoned plans.

These net benefits represent plan assets preserved for retirement benefits.

These estimates are, however, based on what is known about average ordinary administrative expenses and the way those expenses compare with plan termination costs. The Department has crafted the proposed regulation with the intention of increasing efficiency and significantly reducing the administrative cost of terminating abandoned plans through specificity as to procedures, timing, obligations pertaining to records, selection and monitoring of service providers, payment of fees and expenses, plan amendments, tax qualification issues, and reporting. The Department has also proposed models for required notices in an effort to increase efficiency and reduce the cost of termination. The cost for completing and mailing notices for currently abandoned plans is estimated at $652,300; additional annual costs for plans that become abandoned in the future are $87,340. These costs are explained more fully in the section of the preamble related to the Paperwork Reduction Act.

Because the circumstances of abandoned plans are thought to vary considerably, the estimates of savings in termination costs that might arise from efficiency gains are subject to some uncertainty. However, each 10% reduction in the cost of termination is estimated to produce savings in excess of $800,000. Assuming that the specific provisions of the proposed regulation would increase efficiency and reduce costs by at least 20%, about $1.7 million in termination costs would be saved, further preserving retirement benefits for participants and beneficiaries of currently abandoned plans. In this circumstance, the benefits of these terminations exceed their administrative costs by about $900,000 in the year of termination. Similar effects will be seen for the somewhat smaller number of plans that become abandoned from year to year.

It is estimated that the net benefit of the proposed regulation might vary considerably relative to actual efficiency gains and the duration of plan abandonment. For plans potentially abandoned at this time, this net benefit is expected to range from at least $900,000, to $6.6 million if abandonment continued for a year beyond the year of termination, to $27 million if abandonment continued for four years beyond the year of termination. In future years, termination of an additional 1,650 plans annually is expected to result in a net benefit ranging from about $400,000, to $2.7 million at the year beyond the year of termination, to $14.5 million at the fourth year beyond the year of termination. A more detailed discussion of the data, assumptions, and methodology underlying this analysis will be found below.

Safe Harbor for Rollovers From Terminated Individual Account Plans (29 CFR 2550.404a–3)

In addition to plans that are terminated by a QTA because of abandonment, other individual account plans may terminate as a result of a plan sponsor's voluntary decision to discontinue the plan. Similar to a QTA's experience with abandoned plans, a plan administrator or service provider responsible for distributing assets from individual accounts may find that certain participants and beneficiaries fail to elect a form of distribution because they are either missing or unresponsive. In order to select an institution and an investment for rolling over account balances of missing or unresponsive participants or beneficiaries, fiduciaries would benefit from a safe harbor that will limit their liability under section 404(a) of ERISA. Accordingly, fiduciaries that comply with the requirements of this proposed regulation will be deemed to have complied with section 404(a) of ERISA in connection with a rollover from a terminated plan, including an abandoned plan, into an individual retirement plan or other account.

Costs related to establishing individual retirement plans and other accounts and selecting institutions and investments for rolled over accounts, have been accounted for in the Department's regulation on Fiduciary Responsibility Under the Employee Retirement Income Security Act of 1974 Automatic Rollover Safe Harbor (69 FR 58018). The cost for the proposed regulation is attributable only to the Notice to Participants that must be provided to affected participants and beneficiaries informing them about the termination and the need to make an election concerning the distribution of their benefits. The cost for the Notice to Participants in currently abandoned plans is estimated at $207,800. Annual costs for notifying the 56,500 participants in terminating plans, including abandoned plans, estimated to be missing or unresponsive on an ongoing basis are $149,500.

Qualitative benefits will accrue to fiduciaries that rollover accounts under this proposed regulation through greater certainty and reduced exposure to risk, and to former participants through regulatory standards concerning: individual retirement plan or other account providers; investment products, including preservation of principal, rates of return, and liquidity; fees and expenses; and, disclosure.

Special Terminal Report for Abandoned Plans (29 CFR 2520.103–13)

The proposed regulation simplifies the content, timing, and method for final reporting by a QTA to the Department. No cost has been attributed to this proposed regulation, nor has the benefit been estimated.

Executive Order 12866 Statement

Under Executive Order 12866, the Department must determine whether a regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f) of the Executive Order, a ''significant regulatory action'' is an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. OMB has determined that this action is significant under section 3(f)(4) because it raises novel legal or policy issues arising from the President's priorities. Accordingly, the Department has undertaken an analysis of the costs and benefits of the proposed regulations. OMB has reviewed this regulatory action.

Costs

Rules and Regulations for Abandoned Plans (29 CFR 2578.1)

Under the proposed regulation, individual account plans that are found to be abandoned will incur certain costs and fees in connection with the termination and winding up of the plan. These expenses include, among others, the costs associated with determining whether the plan is, in fact, abandoned, as well as notifying participants and the government of the abandonment. There may also be expenses associated with

updating records, distributing benefits, and reporting.

The total expense will arise from the number of plans abandoned. However, the actual number of abandoned plans is not known. To estimate for purposes of this analysis the number of plans that might be abandoned, the Department examined the contribution and distribution activity of individual account pension plans as reported on Form 5500 filings. This information would not by itself indicate whether any plan was abandoned; nor do Form 5500 filings indicate that a plan is abandoned. It is assumed, however, that a QTA would normally have access to more information about a specific plan than can be extracted from Form 5500 data. Nonetheless, Form 5500 data was considered the only source of information for approximating a number of plans that could be considered abandoned based on contribution and distribution activity.

To arrive at its estimate, the Department reviewed the number of plans that filed a Form 5500 in 1999 indicating that no contributions had been received by the plan and no distributions had been made to participants or beneficiaries. Reports by these same filers were compared for each year from 2000 to 2002 in order to determine whether there had been contributions to or distributions from those plans. The Department considered plans to be potentially abandoned for the purpose of this analysis if neither form of activity was present throughout this period. The Department has used this methodology for its estimate of the number of potentially abandoned plans because preliminary analyses of Form 5500 data for plans without contributions and distributions in only a 12-consecutive-month period showed that a portion of those plans resumed activity or terminated in subsequent years. This methodology is merely thought to produce a reasonable estimate that allows for observed variations in plan financial activity from year to year; it does not bear on the actual requirements of a QTA with respect to a finding of abandonment set out in the proposed rules.

This approach yielded an estimate of about 4,000 plans that may be currently abandoned. Because witnesses before the Working Group indicated that most plans were small plans with 20 or fewer participants, it is estimated that the 4,000 plans include 78,500 participants. Other analysis of Form 5500 data suggests that, going forward, an estimated 1,650 plans, with 33,000 participants, and an estimated $868 million in assets, may be abandoned annually. These estimates do not include any abandoned plans that did not file in 1999 or later.

Using the Form 5500 to estimate the number of plans that may have been abandoned results in a fair degree of uncertainty. The fact that a plan has filed an annual report indicates that certain obligations are being met with regard to administration of the plan and that there may be other circumstances that would explain a lack of financial activity. For example, a lack of contributions or distributions from a profit sharing plan may not necessarily indicate that the plan has been abandoned. Testimony by service providers before the Working Group and information gathered under NEPOP indicate, however, that continued administrative activity does not mean that a plan is not abandoned. It is also possible that additional efforts by a QTA in connection with a potential finding of abandonment would reveal that any given plan did not meet the standard for a finding of abandonment. The number of plans actually abandoned, and therefore the number of participants in those plans, may be lower. While each of these factors introduces uncertainty into the estimates, without the advantage of additional information available to a QTA that makes a timely inquiry into the activities of a potentially abandoned plan, the Department believes it is reasonable to rely on the 4,000 plans that showed no activity with regard to contributions or distributions over a four-year period, and the 1,650 plans expected to be abandoned on an annual basis going forward, for reasonable approximations of the number of abandoned plans that might be terminated pursuant to these rules.

The Department has estimated the net impact of the proposed regulation by comparing the ongoing administrative costs for maintaining an abandoned plan with the cost for terminating such a plan. The Department has assumed that termination costs will be significantly affected by the degree to which plan administration was maintained following abandonment. There is expected to be an inverse relationship between ongoing administrative costs and termination costs of abandoned plans, such that a well-maintained plan would be less costly to terminate, and a less-well-maintained plan would be relatively more costly to terminate. Where service providers to the plan have continued to fulfill their contractual obligations, and participants in these more well-maintained plans can be located, the costs for terminating such plans are assumed to be at the lower end of a range. At the higher end of the range are abandoned plans that have not been administered consistent with ERISA's standards, such as where reporting and recordkeeping activities have been discontinued.

Based on available information regarding plans in general, the ongoing administrative costs for abandoned plans are estimated to range from approximately $900 to $3,000 per plan annually, or $3.5 million to $11.8 million annually for 4,000 currently abandoned plans. Testimony before the Working Group indicated that terminating an abandoned plan can add ten percent to the ordinary expenses related to plan administration. As such, termination costs are expected to range from $1,000 to $3,300 per plan, or $3.9 million to $13 million for all potentially abandoned plans. Weighting the number of abandoned plans equally between those that have been more and less actively administered produces an aggregate annual administrative cost for 4,000 abandoned plans of approximately $7.7 million; the one-time cost to terminate these same plans would be $8.4 million based on these assumptions. Similarly, the annual administrative costs for the 1,650 plans estimated to be abandoned annually is estimated at $3.2 million; while the one-time termination cost would be $3.5 million. The actual proportions of more and less actively administered plans may be different from those assumed.

Although this aspect of the analysis suggests that termination is more costly than ongoing administration, the future savings of ongoing expenses that result from termination will continue through the entire period that the plan would otherwise have remained abandoned. Because costs and savings occur in different years, a single-year comparison of expenses does not adequately account for the net impact of termination under these proposed regulations, as is addressed in the discussion of benefits that follows.

The Department expects that one-time termination costs may in fact be less than one year's ongoing administrative expense as a result of its efforts in these proposed regulations to increase efficiency through establishment of specific standards and procedures, and through clarifying and limiting the responsibilities and liabilities of the QTA. The aggregate termination cost savings that would arise from this greater efficiency is subject to uncertainty. However, each 10% reduction in the cost of termination is assumed to produce savings in excess of $800,000. Assuming that the provisions

of these proposed regulations would increase efficiency and reduce costs by at least 20%, $1.7 million in termination costs would be saved, and total one-time termination costs would amount to $6.7 million. Savings of about $700,000 would arise from greater efficiency in terminating plans abandoned in future years, reducing ongoing estimated termination costs from $3.5 million to $2.8 million.

Finally, the Department has estimated the cost for a QTA to complete the notices required to be furnished to the Department, plan sponsor, and participants at $652,300 for currently abandoned plans. Future costs for notices for the 1,650 plans estimated to be abandoned on an annual basis are $87,340. These costs are explained in more detail in the Paperwork Reduction Act section of the preamble.

Safe Harbor for Rollovers From Terminated Individual Account Plans (29 CFR 2550.404a–3)

The safe harbor in section 2550.404a–3 requires the furnishing of a notification to participants and beneficiaries informing them of the termination and the options available for the distribution of assets in an account. The number of notices to be sent and the cost for these notices is based on the number of missing or non-responsive individuals whose account balances are likely to be rolled over by a fiduciary.

Based on data about terminating plans that are not abandoned plans from the year 2000 Form 5500 Annual Report, the Department estimates that, annually, there are 2.3 million participants and beneficiaries in terminating plans. Although the number that will fail to make an election concerning distribution of the assets in their account balances is not known, other information about participants and beneficiaries in defined benefit plans has led the Department to assume that the number is approximately 1%, or 23,500 annually. As such, in order to take advantage of the safe harbor under section 404(a), plan administrators will be required to furnish 23,500 Notices to Participants. The cost for these notices, at 2 minutes per notice and $.38 each for mailing, is $62,170.

Special Terminal Report for Abandoned Plans (29 CFR 2520.103–13)

There are no costs attributable to the changes in annual reporting for abandoned plans in the proposed regulation. Simplified reporting represents a benefit to abandoned plans, as explained below.

Benefits

Rules and Regulations for Abandoned Plans (29 CFR 2578.1)

The proposed regulation would have qualitative and quantitative benefits. The standards and procedures set forth here are intended to facilitate the voluntary, safe, and efficient termination of individual account pension plans that have been abandoned, and to increase the likelihood that participants and beneficiaries will receive the greatest retirement benefit practicable under the circumstances.

The most significant qualitative benefit of the regulation will arise from the facilitation of the voluntary termination of abandoned plans. Absent the proposed standards and procedures, along with provisions that limit the liability of the QTA in certain circumstances, the persons or other entities holding assets of abandoned plans would not in most cases have the authority or incentive to see that such plans are terminated in accordance with applicable requirements, and that benefits are distributed to participants and beneficiaries.

The termination of abandoned plans upon adoption of the regulation would allow participants and beneficiaries that have been unable to access their benefits to elect, according to procedures established by the QTA, a form of distribution for the balance in their individual accounts. The requirements addressing the obligations of the QTA with regard to winding up the affairs of an abandoned plan will serve to protect the benefits of affected participants and beneficiaries in the course of the termination and winding up process. Benefits ultimately payable to participants and beneficiaries are maximized in two important ways. First, termination would preclude the ongoing payment of administrative expenses that diminish assets but only minimally contribute to the management of the plan. In addition, the specific standards and procedures of the proposed regulation would limit the costs that would otherwise be associated with plan termination. Each of these in turn would moderate the extent to which benefits were drawn upon for plan administration.

Costs to be paid from plan assets to wind up the affairs of abandoned plans are meaningful only in the context of the savings of administrative expenses that would otherwise have continued to be paid absent the termination. A comparison of the termination cost with administrative savings is complicated by the fact that the cost is incurred once, while the savings would be incurred repeatedly throughout the years the plan would have been abandoned. To address this timing difference, the Department has estimated the present value of future ongoing administrative expenses using a 3% discount rate over a period from one year after the year of termination to five years after termination. The actual duration of abandonment cannot be determined with certainty; however, a period from one to five years is thought to offer a reasonable illustration of potential administrative cost savings that could arise in future years from the termination of abandoned plans.

The comparison of estimated termination costs of $8.4 million with the present value of future administrative costs discounted over the range of durations noted above shows that while the termination costs exceed the $7.7 million savings in the year of termination, the present value of administrative expenses to be paid in the year following termination exceeds the estimated termination cost by $6.6 million, resulting in a substantial preservation of retirement benefits. The present value of administrative expenses estimated to be paid over the five years following termination exceeds the termination cost by $27 million. Similarly, the cost of termination of the 1,650 plans assumed to be abandoned each year would be slightly greater than ongoing costs in the year of termination, but termination would have had the effect of saving over $2.8 million by the end of the next year, and $11.6 million if the plans remained abandoned for five years. These net benefits would also represent plan assets preserved for retirement benefits.

As noted earlier, the estimates of savings in termination costs that might arise from efficiency gains are subject to some uncertainty. However, each 10% reduction in the cost of termination of existing plans that are potentially abandoned is assumed to produce savings in excess of $800,000. Assuming that the specific provisions of the proposed regulation would increase efficiency and reduce costs by at least 20%, an additional $1.7 million in termination costs would be saved, further preserving retirement benefits for participants and beneficiaries of currently abandoned plans. In this circumstance, the benefits of these terminations exceed their costs by about $900,000 in the year of termination. Efficiency gains for the 1,650 plans that become abandoned from year to year are expected to amount to $710,000, such that the benefits of termination of these

abandoned plans exceed their termination costs by about $400,000.

Safe Harbor for Rollovers From Terminated Individual Account Plans (29 CFR 2550.404a–3)

By providing a safe harbor for plan fiduciaries that roll over individual account balances, the Department has increased certainty concerning compliance with ERISA section 404(a) for fiduciaries that designate institutions and investment products for rolled over accounts and has expanded the opportunity for retirement savings for plan participants. The benefits of greater certainty to fiduciaries under the safe harbor, and of savings protection for participants, cannot be specifically quantified. The proposed regulation will provide qualitative benefits to fiduciaries by affording them greater assurance of compliance and reduced exposure to risk; the substantive conditions of the safe harbor will likewise benefit former participants by directing their retirement savings to individual retirement plan and other account providers, regulated financial institutions, and investment products that minimize risk and offer preservation of principal and liquidity. The Department welcomes comments on the data, assumptions, and estimates presented in this analysis.

Special Terminal Report for Abandoned Plans (29 CFR 2520.103–13)

The proposed regulation provides simplified annual reporting to the Department for QTAs that wind up the affairs of an abandoned plan. The time-savings resulting from abbreviated reporting requirements will reduce administrative costs to abandoned plans and increase benefits to participants and beneficiaries.

Paperwork Reduction Act

As part of its continuing effort to reduce paperwork and respondent burden, the Department of Labor conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data will be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Department is soliciting comments concerning the information collection request (ICR) included in the Proposed Regulations on Termination of Abandoned Individual Account Plans (29 CFR 2578.1), the Safe Harbor for Rollovers From Terminated Individual Account Plans (29 CFR 2550.404a–3), and the Proposed Class Exemption for Services Provided in Connection with the Termination of Abandoned Individual Account Plans. A copy of the ICR may be obtained by contacting the person listed in the PRA Addressee section below.

The Department has submitted a copy of the proposed information collection to OMB in accordance with 44 U.S.C. 3507(d) for review of its information collections. The Department and OMB are particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the Employee Benefits Security Administration. Although comments may be submitted through May 9, 2005 OMB requests that comments be received within 30 days of publication of the Notice of Proposed Rulemaking to ensure their consideration.

PRA Addressee: Address requests for copies of the ICR to Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N–5647, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202) 219–5333. These are not toll-free numbers.

The burden estimates for this ICR are derived from notice requirements in two proposed regulations and a recordkeeping requirement in a proposed class exemption as follows: the Regulations for Abandoned Plans (29 CFR 2578.1); the Safe Harbor for Rollovers From Terminated Individual Account Plans (29 CFR 2550.404a–3) (together, ''terminating plans''); and, the Proposed Class Exemption for Services Provided in Connection with the Termination of Abandoned Individual Account Plans. A Notice to Participants is required under two of the proposed regulations. The burden for all other notices is attributable only to the Regulations for Abandoned Plans. No burden has been estimated for the third proposed regulation, Special Terminal Report for Abandoned Plans (29 CFR 2520.103–13), because the proposal simplifies ERISA annual reporting requirements for abandoned plans. All burdens under the two proposed regulations are considered cost burdens because a terminating plan will most likely use a service provider or a QTA to inform participants, plan sponsors, and the Department about the termination. The burden under the proposed exemption is an hour burden.

Terminating Plans

Terminating plans that roll over the account balances of participants and beneficiaries that are either missing or unresponsive, must, in order to take advantage of the safe harbor under 29 CFR 2550.404a–3 of ERISA, send to participants and beneficiaries a notice that includes information about their right to elect a form of distribution for their benefits.

Notice to Participants (29 CFR 2578.1(d)(2)(v) and (29 CFR 2550.404a–3(e))

Fiduciaries that terminate plans are required to notify participants and beneficiaries about such terminations and the need to elect a form of distribution for the assets in their accounts. The Department has provided two models for this notice, only one of which will require completion, depending on whether the plan is an abandoned plan. At 2 minutes per notice, the cost to complete 78,500 notices for currently abandoned plans is $177,933. Mailing costs, at $.38 per notice, are $29,830.

Ongoing costs for completing and mailing 33,000 notices to participants and beneficiaries in 1,650 plans estimated to be abandoned annually in the future, as well as to 23,500 missing or unresponsive participants and beneficiaries in terminated plans that are not abandoned plans, are estimated at $149,500 for a total of 56,500 Notices to Participants.

Rules and Regulations for Abandoned Plans (29 CFR 2578.1)

The information collection provisions of these rules are intended: To ensure that, in the case of an abandoned plan, a plan sponsor has been determined to be unavailable to fulfill its responsibilities to the plan before further action is taken by a QTA; to facilitate federal oversight of the actions taken by a QTA in winding up the affairs of an abandoned plan; to ensure that participants and beneficiaries are apprised of actions that might affect their rights and benefits under the plan; and to provide for a final notice and reporting regarding the resolution of the affairs of the plan. The Department has included model notices that may be used to satisfy these notice requirements, and has provided for reporting in the format of the Form 5500, for purposes of minimizing compliance burden.

As described in detail earlier, the Department assumes that there are currently 4,000 abandoned plans with 78,500 participants, and that in each future year, 1,650 plans with a total of 33,000 participants will become abandoned.

Most tasks involved in normal plan administration, such as calculating or distributing benefits, recordkeeping, and reporting are not accounted for as burden in this proposed regulation because they are either part of the usual business practices of plans, or have already been accounted for in ICRs for other statutory and regulatory provisions under Title I of ERISA.

The proposed regulation requires that a QTA notify, at different times and under different circumstances: the plan sponsor, or, if unable to do so, service providers that might know the whereabouts of the plan sponsor; the Department; and, participants and beneficiaries of the plan. Because the termination and winding up of an abandoned plan will be performed by a QTA or other service providers that will develop and distribute the required notices and report, the burden for this collection of information is considered a cost burden. Hourly costs are estimated at $68 per hour for a QTA. Supplies and postage costs include: regular mail, $.38; certified mail, $2.68; certified mail, return receipt requested, $4.43. The costs for the notices that make up the ICR in the proposed regulations, for both the 4,000 currently abandoned plans and the 1,650 plans estimated to be abandoned annually in the future, are analyzed below.

Notice of Intent to Terminate (paragraph (b)(5)). The Department has provided a model notice of intent to terminate, which is sent by a QTA to the sponsor of a plan that the QTA suspects is abandoned. The QTA will add to the model, identifying information about the plan sponsor and the QTA. The notice is estimated to require 2 minutes of a QTA's time per letter for a cost of $9,067 for the 4,000 currently abandoned plans. Mailing costs for the 4,000 currently abandoned plans amount to $4.43 for each notice or a total of $17,720. Prospective annual costs for QTA time and mailings for 1,650 plans are estimated to be $11,050.

Notice to Plan Sponsor Sent to Current Address (paragraph (b)(4)). If the Notice of Intent to Terminate was not acknowledged as received by the plan sponsor (or its agent) at the address known to the QTA, the QTA must contact known service providers to the plan in an attempt to obtain a current address for the plan sponsor. If any service provider responds to the QTA with a current address for the plan sponsor, the QTA must re-send the Notice of Intent to Terminate to the new address provided by the service provider(s). Because there is no relevant data for estimating the number of notices that may be required to be sent to additional addresses, the Department has assumed that all plans will be required to send one such notice. Mailing costs for the 4,000 currently abandoned plans are $4.43 for each notice, or $17,720. Prospective annual mailing costs for 1,650 plans are $7,310.

Notice to the Department (paragraph (c)(3)). Once a QTA has found that a plan has been abandoned, it notifies the Department of the abandonment and its intention to serve as a QTA. A model notice has been provided that is to be completed by the QTA. A QTA will require an estimated 75 minutes to complete the model form at a cost of $350,720. Mailing is expected to be by certified mail, at $2.68 each, or $10,720 for 4,000 plans. Ongoing annual costs for preparation and mailing for 1,650 plans are estimated at $144,672.

Final Notice (paragraph (d)(2)(viii)). Upon payment of all plan expenses and distribution of assets, the QTA is required to notify the Office of Enforcement, EBSA, that all benefits have been distributed in accordance with the regulation. If fees and expenses paid by the QTA (or its affiliate) exceed by 20 percent the QTA's initial estimate of costs, the amount of increased fees and expenses, along with an explanation for the increase, are to be included in the Final Notice. QTAs will require an estimated ten minutes to complete the notice at a cost of $45,300 for 4,000 plans. Mailing, including the cost of the Terminal Report that will be filed with the Final Notice, is estimated at $1.00 for a cost of $4,000. Estimated annual costs for future abandoned plans are $20,350 for 1,650 plans.

Safe Harbor for Rollovers From Terminated Individual Account Plans (29 CFR 2550.404a–3)

Written Agreement (paragraph (d)(2)). A fiduciary that rolls over assets from an individual account plan into an individual retirement plan or other account must enter into a written agreement with the individual retirement plan or other account provider. The agreement must include provisions related to investment products, rates of return, and fees and expenses among other requirements. The Department understands that it is customary business practice for agreements related to the establishment of individual retirement plans or other accounts to be set forth in writing and that no new burden is created by this requirement.

Special Terminal Report for Abandoned Plans (29 CFR 2520.103–13)

The rules and regulations described in section 2520.103–13 of the proposed regulation would establish a simplified method for filing a Terminal Report for abandoned individual account plans. The Terminal Report is required to be sent to EBSA along with the Final Notice. No cost is estimated for completing the special Terminal Report because it is assumed that this report will be less burdensome than the annual report that would otherwise be required to be filed by a plan.

Proposed Exemption

Under the proposed regulation on Termination of Abandoned Individual Account Plans, a QTA that terminates an abandoned plan would be permitted to distribute participant or beneficiary account balances by rolling them over into an individual retirement plan or other account. The proposed exemption, also published in today's **Federal Register**, among other provisions, provides relief from the restrictions of section 406(a)(1))(A) through (D), 406(b)(1) and (b)(2) of ERISA and from the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, for QTAs of plans that have been abandoned to select and pay themselves or an affiliate for services to the plans. In addition, for participants or beneficiaries that are missing or nonresponsive, a QTA would be permitted to: Designate itself or an affiliate as provider of an individual

retirement plan or other account for the rolled over balance; select a proprietary investment product as the initial investment; and, pay itself or the affiliate fees in connection with the rollover. In order to ensure that the records necessary to determine whether the conditions of the proposed exemption have been met and are available for examination by participants, the IRS, and the Department, the Department has included a condition in the proposed exemption requiring a QTA to maintain such records for a period of six years.

Banks, insurance companies, and other financial institutions that provide services to abandoned plans and their participants and beneficiaries will act in accordance with customary business practices, which would include maintaining the records required under the terms of the proposed class exemption. Accordingly, the recordkeeping burden attributable to the proposed exemption will be handled by the QTA and is expected to be small. Assuming that all QTAs will take advantage of the proposed exemption, and that each abandoned plan will have a separate QTA, the start up hour burden attributable to recordkeeping for QTAs of currently abandoned plans, at one hour for each QTA, is 4,000 hours; the on-going hour burden for QTAs of plans that may be abandoned in the future is 1,650 hours annually.

Type of Review: New collection.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Notices for Terminated Individual Account Plans.

OMB Number: 1210–0NEW.

Affected public: Individuals or households; business or other for-profit; not-for-profit institutions.

Respondents: 10,123.

Responses: 157,590.

Frequency of Response: On occasion.

Estimated Total Burden Hours: 5,650.

Total Annualized Capital/Startup Costs: $652,300.

Total Burden Cost (Operating and Maintenance): $333,000.

Total Annualized Costs: $985,300.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and which are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a proposed rule is not likely to have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires that the agency present an initial regulatory flexibility analysis at the time of the publication of the notice of proposed rulemaking describing the impact of the rule on small entities and seeking public comment on such impact. Small entities include small businesses, organizations and governmental jurisdictions.

For purposes of analysis under the RFA, EBSA proposes to continue to consider a small entity to be an employee benefit plan with fewer than 100 participants. The basis of this definition is found in section 104(a)(2) of ERISA that permits the Secretary of Labor to prescribe simplified annual reports for pension plans that cover fewer than 100 participants. Under section 104(a)(3), the Secretary may also provide for exemptions or simplified annual reporting and disclosure for welfare benefit plans. Pursuant to the authority of section 104(a)(3), the Department has previously issued at 29 CFR 2520.104–20, 2520.104–21, 2520.104–41, 2520.104–46 and 2520.104b–10 certain simplified reporting provisions and limited exemptions from reporting and disclosure requirements for small plans, including unfunded or insured welfare plans, covering fewer than 100 participants and which satisfy certain other requirements.

Further, while some large employers may have small plans, in general small employers maintain most small plans. Thus, EBSA believes that assessing the impact of these proposed rules on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business which is based on size standards promulgated by the Small Business Administration (SBA) (13 CFR 121.201) pursuant to the Small Business Act (15 U.S.C. 631 *et seq.*). EBSA therefore requests comments on the appropriateness of the size standard used in evaluating the impact of these proposed rules on small entities.

EBSA has preliminarily determined that these proposed rules may have a significant beneficial economic impact on a substantial number of small entities. In an effort to provide a sound basis for this conclusion, EBSA has prepared the following initial regulatory flexibility analysis. Efficiency gains are assumed to arise from the Department's efforts to provide specific standards and procedures, and to address questions concerning what are reasonable efforts to satisfy these standards. The model notices provided as part of the proposed regulations are also intended to minimize compliance burdens.

To the Department's knowledge, there are no federal regulations that might duplicate, overlap, or conflict with the provisions of the proposed regulations.

Rules and Regulations for Abandoned Plans (29 CFR 2578.1)

As explained earlier in the preamble, in drafting the proposed regulation, the Department relied on recommendations in a 2002 report to the ERISA Advisory Council by the Working Group on Orphan Plans. Witnesses before the Working Group testified that regulatory action should be undertaken that would allow for the termination of abandoned plans and the distribution of assets to participants and beneficiaries. The conditions set forth in this proposed regulation are intended to facilitate voluntary, safe, and efficient terminations of abandoned plans, and to increase the likelihood of participants and beneficiaries receiving the greatest retirement benefit practicable under the circumstances. The proposed rules would meet the objectives of providing the authority and incentive for termination by offering greater certainty to QTAs concerning their compliance with the requirements of ERISA section 404(a), to the extent applicable, and of preserving future retirement assets for plan participants. Streamlined procedures for terminating and winding up an abandoned plan will reduce some of the cost that would otherwise have been incurred to terminate abandoned plans.

The proposed rules would impact participants and beneficiaries, abandoned individual account plans, entities that provide a variety of services to plans, and financial institutions and entities acting as QTAs that undertake the termination of individual account plans that have been abandoned.

As described earlier in the preamble, the Department determined that there are 4,000 currently abandoned plans, with 78,500 participants. Another 1,650 plans, with 33,000 participants, are expected to be abandoned annually in subsequent years. All plans are assumed to be small plans with approximately 20 participants. Currently small abandoned plans represent less than 1% of all small plans; the 1,650 small plans expected to be abandoned annually hereafter represent less than ½ of 1% of all small plans. The 5,650 small plans potentially affected may still be considered a substantial number, however.

Because essentially all abandoned plans are assumed to be small plans, the more detailed discussion earlier in the

preamble on the costs and benefits of the proposed regulation is applicable to this analysis of costs and benefits under the RFA. In summary, the net benefits of terminating the 4,000 plans currently assumed to be abandoned range from $900,000 for efficiency gains, to $6.6 million in administrative cost savings if the plans had remained abandoned for one year following the year of termination, or $27 million if the plans had remained abandoned for five years following termination. The estimated beneficial impact on small plans therefore ranges from $225 per plan to $1,650 per plan, or $6,750 per plan over five years. The per-plan net benefits are very similar for the 1,650 plans assumed to be abandoned in future years.

Safe Harbor for Rollovers From Terminated Individual Account Plans (29 CFR 2550.404a–3)

The proposed regulation provides safe harbor protection under section 404(a) of ERISA for fiduciaries that terminate small plans and roll over balances into individual retirement plans or other accounts for participants and beneficiaries that failed to elect a form of distribution for their benefits. Fiduciaries will benefit from increased confidence that they have fulfilled their fiduciary obligations under ERISA, and plan participants will benefit from increased retirement savings. In particular, the two model Notices to Participants provided by the Department will contribute to lower administrative costs for small plans that terminate. Based on an estimated 78,500 participants in currently abandoned plans, the initial cost to small plans is estimated at $207,800. The annual cost to ongoing terminating plans is considerably less in future years when current small abandoned plans will have been terminated, an estimated 95,820.

Special Terminal Report for Abandoned Plans (29 CFR 2520.103–13)

The proposed regulation provides simplified annual reporting to the Department for QTAs that wind up the affairs of small abandoned plans. The resulting time-savings will reduce administrative costs thereby increasing benefits to participants and beneficiaries. No cost has been attributed to this proposed regulation.

Congressional Review Act

The notice of proposed rulemaking being issued here is subject to the provisions of the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and, if finalized, will be transmitted to the Congress and the Comptroller General for review.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, the proposed rules do not include any federal mandate that may result in expenditures by state, local, or tribal governments in the aggregate of more than $100 million, or increased expenditures by the private sector of more than $100 million.

Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires the adherence to specific criteria by federal agencies in the process of their formulation and implementation of policies that have substantial direct effects on the States, the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The proposed rules would not have federalism implications because it has no substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. The requirements implemented in the proposed rules do not alter the fundamental provisions of the statute with respect to employee benefit plans, and as such would have no implications for the States or the relationship or distribution of power between the national government and the States.

List of Subjects

29 CFR Part 2578

Employee benefit plans, Pensions, Retirement.

29 CFR Part 2520

Accounting, Employee benefit plans, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 2550

Employee benefit plans, Employee Retirement Income Security Act, Employee stock ownership plans, Exemptions, Fiduciaries, Investments, Investments foreign, Party in interest, Pensions, Pension and Welfare Benefit Programs Office, Prohibited transactions, Real estate, Securities, Surety bonds, Trusts and Trustees.

For the reasons set forth in the preamble, the Department of Labor proposes to amend 29 CFR chapter XXV as follows:

SUBCHAPTER G—ADMINISTRATION AND ENFORCEMENT UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

1. Add part 2578 to subchapter G to read as follows:

PART 2578—RULES AND REGULATIONS FOR ABANDONED PLANS

Sec.

Authority: 29 U.S.C. 1135; 1104(a); 1103(d)(1).

§ 2578.1 Termination of abandoned individual account plans.

(a) *General.* The purpose of this part is to establish standards for the termination and winding up of an individual account plan (as defined in section 3(34) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act)) with respect to which a qualified termination administrator (as defined in paragraph (g) of this section) has determined there is no responsible plan sponsor or plan administrator within the meaning of section 3(16)(B) and (A) of the Act, respectively, to perform such acts.

(b) *Finding of abandonment.* (1) A qualified termination administrator may find an individual account plan to be abandoned when:

(i) Either:

(A) No contributions to, or distributions from, the plan have been made for a period of at least 12 consecutive months immediately preceding the date on which the determination is being made; or

(B) Other facts and circumstances (such as a filing by or against the plan sponsor for liquidation under title 11 of the United States Code, or communications from participants and beneficiaries regarding distributions) known to the qualified termination administrator suggest that the plan is or may become abandoned by the plan sponsor; and

(ii) Following reasonable efforts to locate or communicate with the plan sponsor, the qualified termination administrator determines that the plan sponsor:

(A) No longer exists;

(B) Cannot be located; or

(C) Is unable to maintain the plan.

(2) Notwithstanding paragraph (b)(1) of this section, a qualified termination administrator may not find a plan to be abandoned if, at anytime before the plan is deemed terminated pursuant to paragraph (c) of this section, the qualified termination administrator receives an objection from the plan sponsor regarding the finding of abandonment and proposed termination.

(3) A qualified termination administrator shall, for purposes of paragraph (b)(1)(ii) of this section, be deemed to have made a reasonable effort to locate or communicate with the plan sponsor if the qualified termination administrator sends to the last known address of the plan sponsor, and in the case of a plan sponsor that is a corporation, to the address of the person designated as the corporation's agent for service of legal process, by a method of delivery requiring acknowledgement of receipt, the notice described in paragraph (b)(5) of this section.

(4) If receipt of the notice described in paragraph (b)(5) of this section is not acknowledged pursuant to paragraph (b)(3) of this section, the qualified termination administrator shall be deemed to have made a reasonable effort to locate or communicate with the plan sponsor if the qualified termination administrator contacts known service providers (other than itself) of the plan and requests the current address of the plan sponsor from such service providers and, if such information is provided, the qualified termination administrator sends to each such address, by a method of delivery requiring acknowledgement of receipt, the notice described in paragraph (b)(5) of this section.

(5) The notice referred to in paragraph (b)(3) of this section shall contain the following information:

(i) The name and address of the qualified termination administrator;

(ii) The name of the plan;

(iii) The account number or other identifying information relating to the plan;

(iv) A statement that the plan may be terminated and benefits distributed pursuant to 29 CFR 2578.1 if the plan sponsor fails to contact the qualified termination administrator within 30 days;

(v) The name, address, and telephone number of the person, office, or department that the plan sponsor must contact regarding the plan;

(vi) A statement that if the plan is terminated pursuant to 29 CFR 2578.1, notice of such termination will be furnished to the U.S. Department of Labor's Employee Benefits Security Administration; and

(vii) The following statement: ''The U.S. Department of Labor requires that you be informed that, as a fiduciary or plan administrator or both, you may be personally liable for costs, civil penalties, excise taxes, etc. as a result of your acts or omissions with respect to this plan. The termination of this plan will not relieve you of your liability for any such costs, penalties, taxes, etc.''

(c) *Deemed termination.* (1) Except as provided in paragraph (c)(2) of this section, if a qualified termination administrator finds, pursuant to paragraph (b)(1) of this section, that an individual account plan has been abandoned, the plan shall be deemed to be terminated on the ninetieth (90th) day following the date on which a notice of plan abandonment, as described in paragraph (c)(3) of this section, is furnished to the U.S. Department of Labor.

(2) If, prior to the ninetieth (90th) day following the date on which notice, in accordance with paragraph (c)(3) of this section, is furnished to the U.S. Department of Labor, the Department notifies the qualified termination administrator that it—

(i) Objects to the termination of the plan, the plan shall not be deemed terminated under paragraph (c)(1) of this section until the qualified termination administrator is notified that the Department has withdrawn its objection;

(ii) Waives the 90-day period described in paragraph (c)(1), the plan shall be deemed terminated upon the qualified termination administrator's receipt of such notification.

(3) Following a qualified termination administrator's finding, pursuant to paragraph (b)(1) of this section, that an individual account plan has been abandoned, the qualified termination administrator shall furnish to the U.S. Department of Labor a notice of plan abandonment that is signed and dated by the qualified termination administrator and that includes the following information:

(i) *Qualified termination administrator information.* (A) The name, EIN, address, and telephone number of the person electing to be the qualified termination administrator, including the address, e-mail address, and telephone number of the person signing the notice (or other contact person, if different from the person signing the notice);

(B) A statement that the person (identified in paragraph (c)(3)(i)(A) of this section) is a qualified termination administrator within the meaning of paragraph (g) of this section and elects to terminate and wind up the plan (identified in paragraph (c)(3)(ii)(A) of this section) in accordance with the provisions of this section; and

(C) An identification whether the person electing to be the qualified termination administrator or its affiliate is, or within the past 24 months has been, the subject of an investigation, examination, or enforcement action by the Department, Internal Revenue Service, or Securities and Exchange Commission concerning such entity's conduct as a fiduciary or party in interest with respect to any plan covered by the Act;

(ii) *Plan information.* (A) The name, address, telephone number, account number, EIN, and plan number of the plan with respect to which the person is electing to serve as the qualified termination administrator;

(B) The name and last known address and telephone number of the plan sponsor;

(C) The estimated number of participants in the plan;

(iii) *Findings.* A statement that the person electing to be the qualified termination administrator finds that the plan (identified in paragraph (c)(3)(ii)(A) of this section) is abandoned pursuant to paragraph (b) of this section. This statement shall include an explanation of the basis for such a finding, specifically referring to the provisions in paragraph (b)(1) of this section, and a description of the specific steps (set forth in paragraphs (b)(3) and (b)(4) of this section) taken to locate or communicate with the known plan sponsor;

(iv) *Plan asset information.* (A) The estimated value of the plan's assets held by the person electing to be the qualified termination administrator;

(B) The length of time plan assets have been held by the person electing to be the qualified termination administrator, if such period of time is less than 12 months; and

(C) An identification of any assets with respect to which there is no readily ascertainable fair market value, as well as information, if any, concerning the value of such assets;

(v) *Service provider information.* (A) The name, address, and telephone number of known service providers

(*e.g.,* record keeper, accountant, lawyer, other asset custodian(s)) to the plan; and

(B) An identification of any services considered necessary to wind up the plan in accordance with this section, the name of the service provider(s) that is expected to provide such services, and an itemized estimate of expenses attendant thereto expected to be paid out of plan assets by the qualified termination administrator; and

(vi) A statement that the information being provided in the notice is true and complete based on the knowledge of the person electing to be the qualified termination administrator, and that the information is being provided by the qualified termination administrator under penalty of perjury.

(4) For purposes of calculating the 90-day period referred to in paragraph (c)(1) of this section, the notice described in paragraph (c)(3) of this section shall be considered furnished to the Department:

(i) Upon mailing, if accomplished by United States Postal Service certified mail or Express mail;

(ii) Upon receipt by the delivery service, if accomplished using a ''designated private delivery service'' within the meaning of 26 U.S.C. 75029 (f); or

(iii) In the case of any other method of furnishing, upon receipt by the Department.

(d) *Winding up the affairs of the plan.* (1) In any case where an individual account plan is deemed to be terminated pursuant to paragraph (c) of this section, the qualified termination administrator shall take steps as may be necessary or appropriate to wind up the affairs of the plan and distribute benefits to the plan's participants and beneficiaries.

(2) For purposes of paragraph (d)(1) of this section, the qualified termination administrator shall:

(i) *Plan records.* (A) Undertake reasonable and diligent efforts to locate and update plan records necessary to determine the benefits payable under the terms of the plan to each participant and beneficiary.

(B) For purposes of paragraph (d)(2)(i)(A) of this section, a qualified termination administrator shall not have failed to make reasonable and diligent efforts to update plan records merely because the administrator determines in good faith that updating the records is either impossible or involves significant cost to the plan in relation to the total assets of the plan.

(ii) *Calculate benefits.* Use reasonable care in calculating the benefits payable to each participant or beneficiary based on plan records described in paragraph (d)(2)(i) of this section.

(iii) *Engage service providers.* Engage, on behalf of the plan, such service providers as are necessary for the qualified termination administrator to wind up the affairs of the plan and distribute benefits to the plan's participants and beneficiaries in accordance with paragraph (d)(1) of this section.

(iv) *Pay reasonable expenses.* (A) Pay, from plan assets, the reasonable expenses of carrying out the qualified termination administrator's authority and responsibility under this section.

(B) Expenses of plan administration shall be considered reasonable solely for purposes of paragraph (d)(2)(iv)(A) of this section if:

(*1*) Such expenses are for services necessary to wind up the affairs of the plan and distribute benefits to the plan's participants and beneficiaries,

(*2*) Such expenses: (*i*) Are consistent with industry rates for such or similar services, based on the experience of the qualified termination administrator, and

(*ii*) are not in excess of rates charged by the qualified termination administrator (or affiliate) for same or similar services provided to customers that are not plans terminated pursuant to this section, if the qualified termination administrator (or affiliate) provides same or similar services to such other customers, and

(*3*) The payment of such expenses would not constitute a prohibited transaction under the Act or is exempted from such prohibited transaction provisions pursuant to section 408(a) of the Act.

(v) *Notify participants.* (A) Furnish to each participant or beneficiary of the plan a notice containing the following:

(*1*) The name of the plan;

(*2*) A statement that the plan has been determined to be abandoned by the plan sponsor and, therefore, has been terminated pursuant to regulations issued by the U.S. Department of Labor;

(*3*)(*i*) A statement of the account balance and the date on which it was calculated by the qualified termination administrator, and

(*ii*) The following statement: ''The actual amount of your distribution may be more or less than the amount stated in this letter depending on investment gains or losses and the administrative cost of terminating your plan and distributing your benefits.'';

(*4*) A description of the distribution options available under the plan and a request that the participant or beneficiary elect a form of distribution and inform the qualified termination administrator (or designee) of that election;

(*5*)(*i*) A statement explaining that, if a participant or beneficiary fails to make an election within 30 days from receipt of the notice, the qualified termination administrator (or designee) will roll over the account balance of the participant or beneficiary directly to an individual retirement plan (*i.e.*, individual retirement account or annuity) or other account (in the case of distributions described in § 2550.404a–3(d)(1)(ii) of this chapter) and the account balance will be invested in an investment product designed to preserve principal and provide a reasonable rate of return and liquidity;

(*ii*) A statement of the fees, if any, that will be paid from the participant or beneficiary's individual retirement plan, if such information is known at the time of the furnishing of this notice; and

(*iii*) The name, address and phone number of the individual retirement plan provider, if such information is known at the time of the furnishing of this notice; and

(*6*) The name, address, and telephone number of the qualified termination administrator and, if different, the name, address and phone number of a contact person (or entity) for additional information concerning the termination and distribution of benefits under this section.

(B)(*1*) For purposes of paragraph (d)(2)(v)(A) of this section, a notice shall be furnished to each participant or beneficiary in accordance with the requirements of § 2520.104b–1(b)(1) of this chapter to the last known address of the participant or beneficiary; and

(*2*) In the case of a notice that is returned to the plan as undeliverable, the qualified termination administrator shall, consistent with the duties of a fiduciary under section 404(a)(1) of ERISA, take steps to locate and provide notice to the participant or beneficiary prior to making a distribution pursuant to paragraph (d)(2)(vi) of this section. If, after such steps, the qualified termination administrator is unsuccessful in locating and furnishing notice to a participant or beneficiary, the participant or beneficiary shall be deemed to have been furnished the notice and to have failed to make an election within the 30-day period described in paragraph (d)(2)(vi) of this section.

(vi) *Distribute benefits.* (A) Distribute benefits in accordance with the form of distribution elected by each participant or beneficiary.

(B) If the participant or beneficiary fails to make an election within 30 days from receipt of the notice described in paragraph (d)(2)(v) of this section, distribute benefits in the form of a direct

rollover in accordance with § 2550.404a–3 of this chapter.

(C) For purposes of distributions pursuant to paragraph (d)(2)(vi)(B) of this section, the qualified termination administrator may designate itself (or an affiliate) as the transferee of such proceeds, and invest such proceeds in a product in which it (or an affiliate) has an interest, only if such designation and investment is exempted from the prohibited transaction provisions under the Act pursuant to section 408(a) of Act.

(vii) *Special Terminal Report for Abandoned Plans.* File the Special Terminal Report for Abandoned Plans in accordance with § 2520.103–13 of this chapter.

(viii) *Final Notice.* No later than two months after the end of the month in which the qualified termination administrator satisfies the requirements in paragraph (d)(2)(i) through (d)(2)(vi) of this section, furnish to the Office of Enforcement, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210, a notice, signed and dated by the qualified termination administrator, containing the following information:

(A) The name, EIN, address, e-mail address, and telephone number of the qualified termination administrator, including the address and telephone number of the person signing the notice (or other contact person, if different from the person signing the notice);

(B) The name, account number, EIN, and plan number of the plan with respect to which the person served as the qualified termination administrator;

(C) A statement that the plan has been terminated and all assets held by the qualified termination administrator have been distributed to the plan's participants and beneficiaries on the basis of the best available information;

(D) A statement that the Special Terminal Report for Abandoned Plans meeting the requirements of § 2520.103–13 of this chapter is attached to this notice;

(E) A statement that plan expenses were paid out of plan assets by the qualified termination administrator in accordance with the requirements of paragraph (d)(2)(iv) of this section;

(F) If fees and expenses paid to the qualified termination administrator (or its affiliate) exceed by 20 percent or more the estimate required by paragraph (c)(3)(v)(B) of this section, a statement that actual fees and expenses exceeded estimated fees and expenses and the reasons for such additional costs; and

(G) A statement that the information being provided in the notice is true and complete based on the knowledge of the qualified termination administrator, and that the information is being provided by the qualified termination administrator under penalty of perjury.

(3) The terms of the plan shall, for purposes of title I of ERISA, be deemed amended to the extent necessary to allow the qualified termination administrator to wind up the plan in accordance with this section.

(e) *Limited liability of qualified termination administrator.* (1) Except as otherwise provided in paragraph (e)(2) of this section, to the extent that the responsibilities enumerated in paragraph (d)(2) of this section involve the exercise of discretionary authority or control that would make the qualified termination administrator a fiduciary within the meaning of section 3(21) of the Act, the qualified termination administrator shall be deemed to satisfy its responsibilities under section 404(a) of the Act to the extent the qualified termination administrator complies with the requirements of paragraph (d)(2) of this section.

(2) A qualified termination administrator shall be responsible for the selection and monitoring of any service provider (other than monitoring an individual retirement plan provider selected pursuant to paragraph (d)(2)(vi)(B) of this section) determined by the qualified termination administrator to be necessary to the winding up of the affairs of the plan, as well as ensuring the reasonableness of the compensation paid for such services. To the extent that a qualified termination administrator, in accordance with the requirements of section 404(a)(1) of the Act, selects and monitors a service provider, and does not otherwise enable the service provider to commit fiduciary breaches, the qualified termination administrator shall not be liable for the acts or omissions of the service provider with respect to which the qualified termination administrator does not have knowledge.

(f) *Continued liability of plan sponsor.* Nothing in this section shall serve to relieve or limit the liability of any person other than the qualified termination administrator due to a violation of ERISA.

(g) *Qualified termination administrator.* A termination administrator is qualified under this section only if:

(1) It is eligible to serve as a trustee or issuer of an individual retirement plan, within the meaning of section 7701(a)(37) of the Internal Revenue Code, and

(2) It holds assets of the plan that is considered abandoned pursuant to paragraph (b) of this section.

BILLING CODE 4150–29–P

APPENDIX A TO § 2578.1

NOTICE OF INTENT TO TERMINATE PLAN

[*Date of notice*]

[*Name of plan sponsor*]
[*Last known address of plan sponsor*]

Re: [*Name of plan and account number or other identifying information*]

Dear [*Name of plan sponsor*]:

We are writing to advise you of our concern about the status of the subject plan. Our intention is to begin the process of terminating the plan in accordance with federal law if you do not contact us within 30 days of your receipt of this notice.

Our basis for taking this action is that *{insert the following language in the brackets*: [our records reflect that there have been no contributions to, or distributions from, the plan within the past 12 months] *or* [*if the basis is under § 29 CFR 2578.1(b)(1)(i)(B), provide a description of the facts and circumstances indicating plan abandonment*]*}*.

We are sending this notice to you because our records show that you are the sponsor of the subject plan. The U.S. Department of Labor requires that you be informed that, as a fiduciary or plan administrator or both, you may be personally liable for all costs, civil penalties, excise taxes, etc. as a result of your acts or omissions with respect to this plan. The termination of this plan will not relieve you of your liability for any such costs, penalties, taxes, etc. Federal law also requires us to notify the U.S. Department of Labor, Employee Benefits Security Administration, of the termination of any abandoned plan.

Please contact [*name, address, and telephone number of the person, office, or department that the sponsor must contact regarding the plan*] within 30 days in order to prevent this action.

Sincerely,

[*Name and address of qualified termination administrator or appropriate designee*]

APPENDIX B TO § 2578.1

NOTIFICATION OF PLAN ABANDONMENT AND INTENT TO SERVE AS QUALIFIED TERMINATION ADMINISTRATOR

[*Date of notice*]

Abandoned Plan Coordinator, Office of Enforcement
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Ave., NW
Suite 600
Washington, DC, 20210

Re:	Plan Identification	Qualified Termination Administrator
	[*Plan name and plan number*]	[N*ame*]
	[*EIN*]	[*Address*]
	[*Plan account number*]	[*E-mail address*]
	[*Address*]	[Telephone number]
	[*Telephone number*]	[*EIN*]

Abandoned Plan Coordinator:

Pursuant to 29 CFR 2578.1(b), we have determined that the subject plan has been abandoned by its sponsor. We are eligible to serve as a Qualified Termination Administrator for purposes of terminating and winding up the plan in accordance with 29 CFR 2578.1, and hereby elect to do so.

We find that the plan is abandoned within the meaning of 29 CFR 2578.1(b) because [*check the appropriate box below and provide additional information as necessary*]:

☐ There have been no contributions to, or distributions from, the plan for a period of at least 12 consecutive months immediately preceding the date of this letter. Our records indicate that the date of the last contribution or distribution was [*enter appropriate date*].

☐ The following facts and circumstances suggest that the plan is or may become abandoned by the plan sponsor [*add description below*]:

_____

_____

_____

We have also determined that the plan sponsor [*check appropriate box below*]:

☐ No longer exists

☐ Cannot be located

☐ Is unable to maintain the plan

We have taken the following steps to locate or communicate with the known plan sponsor [*provide an explanation below*]:

_____

_____

_____

Part I – Plan Information

1. Estimated number of individuals (participants and beneficiaries) with accounts under the plan: [*number*]

2. Plan assets held by Qualified Termination Administrator:
   A. Estimated value of assets of the plan: [*value*]
   B. Months we have held plan assets, if less than 12: [*number*]

   C. Hard to value assets [*select "yes" or "no" to identify any assets with no readily ascertainable fair market value, and include for those identified assets the best known estimate of their value*]:

		Yes	No	
(a)	Partnership/joint venture interests	☐	☐	[*value*]
(b)	Employer real property	☐	☐	[*value*]
(c)	Real estate (other than (b))	☐	☐	[*value*]
(d)	Employer securities	☐	☐	[*value*]
(e)	Participant loans	☐	☐	[*value*]
(f)	Loans (other than (e))	☐	☐	[*value*]
(g)	Tangible personal property	☐	☐	[*value*]

3. Name and last known address and telephone number of plan sponsor:

   _____

   _____

   _____

Part II – Known Service Providers of the Plan

	Name	Address	Telephone
1.			
2.			
3.			

Part III – Services and Related Expenses to be Paid

	Services	Service Provider	Estimated Cost
1.			
2.			
3.			

Part IV – Investigation

In the past 24 months [*check one box*]:

☐ Neither we nor our affiliates are or have been the subject of an investigation, examination, or enforcement action by the Department, Internal Revenue Service, or Securities and Exchange Commission concerning such entity's conduct as a fiduciary or party in interest with respect to any plan covered by the Act.

☐ We or our affiliates are or have been the subject of an investigation, examination, or enforcement action by the Department, Internal Revenue Service, or Securities and Exchange Commission concerning such entity's conduct as a fiduciary or party in interest with respect to any plan covered by the Act.

Part V – Contact Person [*enter information only if different from signatory*]:

[*Name*]
[*Address*]
[*E-mail address*]
[*Telephone number*]

Under penalties of perjury, I declare that I have examined this notice and to the best of my knowledge and belief, it is true, correct and complete.

[*Signature*]
[*Title of person signing on behalf the Qualified Termination Administrator*]
[*Address, e-mail address, and telephone number*]

APPENDIX C TO § 2578.1

NOTICE OF PLAN TERMINATION

[*Date of notice*]

[*Name and last known address of plan participant or beneficiary*]

Re: [*Name of plan*]

Dear [*Name of plan participant or beneficiary*]:

We are writing to inform you that your retirement plan, identified above, has been terminated pursuant to regulations issued by the U.S. Department of Labor. The plan was terminated because it was abandoned by [*enter the name of the plan sponsor*].

Your account balance on [*date*] is/was [*account balance*]. We will be distributing this money as permitted under the terms of the Plan and federal regulations. The actual amount of your distribution may be more or less than the amount stated in this letter depending on investment gains or losses and the administrative cost of terminating your plan and distributing your benefits.

Your distribution options under the Plan are [*add a description of the Plan's distribution options*]. It is very important that you elect one of these forms of distribution and inform us of your election. The process for informing us of this election is [*enter a description of the election process established by the qualified termination administrator*].

[*If this notice is for a participant or participant's spouse, complete and include the following paragraph.*]

If you do not make an election within 30 days from your receipt of this notice, your account balance will be transferred directly to an individual retirement plan. {*If the name of the provider of the individual retirement plan is known, include the following sentence:* The name of the provider of the individual retirement plan is [*name, address and phone number of the individual retirement plan provider*].} Pursuant to federal law, your money in the individual retirement plan would then be invested in an investment product designed to preserve principal and provide a reasonable rate of return and liquidity. {*If fee information is known, include the following sentence:* Should your money be transferred into an individual retirement plan, [*enter the name of the financial institution*] charges the following fees for its services: [*add statement of fees, if any, that will be paid from the participant or beneficiary's individual retirement plan*].}

[*If this notice is for a beneficiary other than the participant's spouse, complete and include the paragraph below rather than the paragraph above.*]

If you do not make an election within 30 days from your receipt of this notice, your account balance will be transferred directly to an account maintained by [*name, address and phone number of the financial institution if known, otherwise insert the following language*: a bank or insurance company or other similar financial institution.]. Pursuant to federal law, your money would then be invested in an investment product designed to preserve principal and provide a reasonable rate of return and liquidity. {*If fee information is known, include the following sentence:* Should your money be transferred into such an account, [*enter the name of the financial institution*] charges the following fees for its services: [*add statement of fees, if any, that will be paid from the participant or beneficiary's individual retirement plan*].}

For more information about the termination, your account balance, or distribution options, please contact [*name, address, and telephone number of the qualified termination administrator and, if different, the appropriate contact person*].

Sincerely,

[*Name of qualified termination administrator or appropriate designee*]

APPENDIX D TO § 2578.1

FINAL NOTICE

[*Date of notice*]

Abandoned Plan Coordinator, Office of Enforcement
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Ave., NW
Suite 600
Washington, DC, 20210

Re: Plan Identification
[*Plan name and plan number*]
[*Plan account number*]
[*EIN*]

Qualified Termination Administrator
[*Name*]
[*Address and e-mail address*]
[*Telephone number*]
[*EIN*]

Abandoned Plan Coordinator:

Part I – General Information

The termination and winding-up process of the subject plan has been completed pursuant to 29 CFR 2578.1. Benefits were distributed to participants and beneficiaries on the basis of the best available information pursuant to 29 CFR 2578.1(d)(2)(i). Plan expenses were paid out of plan assets pursuant to 29 CFR 2578.1(d)(2)(iv). A Special Terminal Report for Abandoned Plans meeting the requirements of 29 CFR 2520.103-13 is attached to this notice.

Part II – Contact Person [*complete only if different from signatory*]

[*Name*]
[*Address and e-mail address*]
[*Telephone number*]

[*Include Part III only if fees and expenses paid to the QTA (or its affiliate) exceeded by 20 percent or more the estimate required by 29 CFR 2578.1(c)(3)(v)(B).*]

Part III – Expenses Paid to Qualified Termination Administrator

The actual fees and/or expenses we received in connection with winding up the Plan exceeded by {*insert either*: [20 percent or more] *or* [*the actual percentage*]} the estimate required by 29 CFR 2578.1(c)(3)(v)(B). The reason or reasons for such additional costs are [*provide an explanation of the additional costs*].

Under penalties of perjury, I declare that I have examined this notice and to the best of my knowledge and belief, it is true, correct and complete.

[*Signature*]
[*Title of person signing on behalf the Qualified Termination Administrator*]
[*Address, e-mail address, and telephone number*]

Attachment

BILLING CODE 4150–29–C

SUBCHAPTER C—REPORTING AND DISCLOSURE UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

PART 2520—RULES AND REGULATIONS FOR REPORTING AND DISCLOSURE

2. The authority citation for part 2520 continues to read as follows:

Authority: 29 U.S.C. 1021–1025, 1027, 1029–31, 1059, 1134 and 1135; and Secretary of Labor's Order 1–2003, 68 FR 5374 (Feb. 3, 2003). Sec. 2520.101–2 also issued under 29 U.S.C. 1132, 1181–1183, 1181 note, 1185, 1185a–b, 1191, and 1191a–c. Secs. 2520.102–3, 2520.104b–1 and 2520.104b–3 also issued under 29 U.S.C. 1003,1181–1183, 1181 note, 1185, 1185a–b, 1191, and 1191a–c. Secs. 2520.104b–1 and 2520.107 also issued under 26 U.S.C. 401 note, 111 Stat. 788. Section 2520.101–4 also issued under sec. 103 of Pub. L. 108–218.

3. Add § 2520.103–13 to read as follows:

§ 2520.103–13 Special terminal report for abandoned plans.

(a) *General.* The terminal report required to be filed by the qualified termination administrator pursuant to § 2578.1(d)(2)(vii) of this chapter shall consist of the items set forth in paragraph (b) of this section. Such report shall be filed in accordance with the method of filing set forth in paragraph (c) of this section and at the time set forth in paragraph (d) of this section.

(b) *Contents.* The terminal report described in paragraph (a) of this section shall contain:

(1) Identification information concerning the qualified termination administrator and the plan being terminated.

(2) The total assets of the plan as of the date the plan was deemed terminated under § 2578.1(c) of this chapter, prior to any reduction for termination expenses and distributions to participants and beneficiaries.

(3) The total termination expenses paid by the plan and a separate schedule identifying each service provider and amount received, itemized by expense.

(4) The total distributions made pursuant to § 2578.1(d)(2)(vi) of this chapter and a statement regarding whether any such distributions were transfers under § 2578.1(d)(2)(vi)(B) of this chapter.

(c) *Method of filing.* The terminal report described in paragraph (a) shall be filed:

(1) On the most recent Form 5500 available as of the date the qualified termination administrator satisfies the requirements in § 2578.1(d)(2)(i) through § 2578.1(d)(2)(vi) of this chapter;

(2) In accordance with the Form's instructions pertaining to terminal reports of qualified termination administrators; and

(3) As an attachment to the notice described in § 2578.1(d)(2)(viii) of this chapter.

(d) *When to file.* The qualified termination administrator shall file the terminal report described in paragraph (a) within two months after the end of the month in which the qualified termination administrator satisfies the requirements in § 2578.1(d)(2)(i) through § 2578.1(d)(2)(vi) of this chapter.

(e) *Limitation.* (1) Except as provided in this section, no report shall be required to be filed by the qualified termination administrator under part 1 of title I of ERISA for a plan being terminated pursuant to § 2578.1 of this chapter.

(2) Filing of a report under this section by the qualified termination administrator shall not relieve any other person from any obligation under part 1 of title I of ERISA.

SUBCHAPTER F—FIDUCIARY RESPONSIBILITY UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

PART 2550—RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

4. The authority citation for part 2550 is revised to read as follows:

Authority: 29 U.S.C. 1135; and Secretary of Labor's Order No. 1–2003, 68 FR 5374 (Feb. 3, 2003). Sec. 2550.401b–1 also issued under sec. 102, Reorganization Plan No. 4 of 1978, 43 FR 47713 (Oct. 17, 1978), 3 CFR, 1978 Comp. 332, effective Dec. 31, 1978, 44 FR 1065 (Jan. 3, 1978), 3 CFR, 1978 Comp. 332. Sec. 2550.401c–1 also issued under 29 U.S.C. 1101. Sec. 2550.404c–1 also issued under 29 U.S.C. 1104. Sec. 2550.407c–3 also issued under 29 U.S.C. 1107. Sec. 2550.404a–2 also issued under 26 U.S.C. 401 note (sec. 657, Pub. L. 107–16, 115 Stat. 38). Sec. 2550.408b–1 also issued under 29 U.S.C. 1108(b) (1) and sec. 102, Reorganization Plan No. 4 of 1978, 3 CFR, 1978 Comp. p. 332, effective Dec. 31, 1978, 44 FR 1065 (Jan. 3, 1978), and 3 CFR, 1978 Comp. 332. Sec. 2550.412–1 also issued under 29 U.S.C. 1112.

5. Add § 2550.404a–3 and its appendix to read as follows:

§ 2550.404a–3 Safe Harbor for Rollovers From Terminated Individual Account Plans.

(a) *General.* (1) This section provides a safe harbor under which a fiduciary (including a qualified termination administrator, within the meaning of § 2578.1(g) of this chapter) of a terminated individual account plan, as described in paragraph (a)(2) of this section, will be deemed to have satisfied its duties under section 404(a) of the Employee Retirement Income Security Act of 1974, as amended (the Act)), 29 U.S.C. 1001 *et seq.*, in connection with a rollover of a distribution, described in paragraph (b) of this section, to an individual retirement plan or other account.

(2) This section shall apply to an individual account plan only if—

(i) In the case of an individual account plan that is an abandoned plan within the meaning of § 2578.1 of this chapter, such plan was intended to be

maintained as a tax-qualified plan in accordance with the requirements of section 401(a) of the Internal Revenue Code of 1986 (Code); or

(ii) In the case of any other individual account plan, such plan is maintained in accordance with the requirements of section 401(a) of the Code at the time of the distribution.

(3) The standards set forth in this section apply solely for purposes of determining whether a fiduciary meets the requirements of this safe harbor. Such standards are not intended to be the exclusive means by which a fiduciary might satisfy his or her responsibilities under the Act with respect to making rollovers described in this section.

(b) *Distributions.* This section shall apply to the rollover of a distribution from a terminated individual account plan to an individual retirement plan or other account if, in connection with such distribution:

(1) The participant or beneficiary, on whose behalf the rollover will be made, was furnished notice in accordance with paragraph (e) of this section or, in the case of an abandoned plan, § 2578.1(d)(2)(v) of this chapter, and

(2) The participant or beneficiary failed to elect a form of distribution within 30 days of the furnishing of the notice described paragraph (b)(1) of this section.

(c) *Safe harbor.* A fiduciary that meets the conditions of paragraph (d) of this section shall, with respect to a distribution described in paragraph (b) of this section, be deemed to have satisfied its duties under section 404(a) of the Act with respect to both the selection of an individual retirement plan provider or other account provider and the investment of funds in connection with a rollover distribution described in this section.

(d) *Conditions.* A fiduciary shall qualify for the safe harbor described in paragraph (c) of this section if:

(1)(i) Except as provided in paragraph (d)(1)(ii) of this section, the distribution is to an individual retirement plan within the meaning of section 7701(a)(37) of the Code;

(ii) In the case of a distribution on behalf of a distributee other than a participant or spouse, within the meaning of section 402(c) of the Code, such distribution is to an account (other than an individual retirement plan) with an institution eligible to establish and maintain individual retirement plans within the meaning of section 7701(a)(37) of the Code.

(2) The fiduciary enters into a written agreement with the individual retirement plan or other account provider that provides:

(i) The rolled-over funds shall be invested in an investment product designed to preserve principal and provide a reasonable rate of return, whether or not such return is guaranteed, consistent with liquidity;

(ii) For purposes of paragraph (d)(2)(i) of this section, the investment product selected for the rolled-over funds shall seek to maintain, over the term of the investment, the dollar value that is equal to the amount invested in the product by the individual retirement plan or other account;

(iii) The investment product selected for the rolled-over funds shall be offered by a state or federally regulated financial institution, which shall be: A bank or savings association, the deposits of which are insured by the Federal Deposit Insurance Corporation; a credit union, the member accounts of which are insured within the meaning of section 101(7) of the Federal Credit Union Act; an insurance company, the products of which are protected by state guaranty associations; or an investment company registered under the Investment Company Act of 1940;

(iv) All fees and expenses attendant to an individual retirement plan or other account, including investments of such plan, (*e.g.*, establishment charges, maintenance fees, investment expenses, termination costs and surrender charges) shall not exceed the fees and expenses charged by the individual retirement plan or other account provider for comparable individual retirement plans or other accounts established for reasons other than the receipt of a rollover distribution under this section; and

(v) The participant or beneficiary on whose behalf the fiduciary makes a direct rollover shall have the right to enforce the terms of the contractual agreement establishing the individual retirement plan or other account, with regard to his or her rolled-over account balance, against the individual retirement plan or other account provider.

(3) Both the fiduciary's selection of an individual retirement plan or other account and the investment of funds would not result in a prohibited transaction under section 406 of the Act, unless such actions are exempted from the prohibited transaction provisions by a prohibited transaction exemption issued pursuant to section 408(a) of the Act.

(e) *Notice to participants and beneficiaries.* (1) *Content.* Each participant or beneficiary of the plan shall be furnished a notice containing the following:

(i) The name of the plan;

(ii) A statement of the account balance, the date on which the amount was calculated, and, if relevant, an indication that the amount to be distributed may be more or less than the amount stated in the notice, depending on investment gains or losses and the administrative cost of terminating the plan and distributing benefits;

(iii) A description of the distribution options available under the plan and a request that the participant or beneficiary elect a form of distribution and inform the plan administrator (or other fiduciary) identified in paragraph (e)(1)(vii) of this section of that election;

(iv) A statement explaining that, if a participant or beneficiary fails to make an election within 30 days from receipt of the notice, the plan will directly roll over the account balance of the participant or beneficiary to an individual retirement plan (*i.e.*, individual retirement account or annuity) or other account (in the case of distributions described in paragraph (d)(1)(ii)) and the account balance will be invested in an investment product designed to preserve principal and provide a reasonable rate of return and liquidity;

(v) A statement explaining what fees, if any, will be paid from the participant or beneficiary's individual retirement plan or other account, if such information is known at the time of the furnishing of this notice;

(vi) The name, address and phone number of the individual retirement plan or other account provider, if such information is known at the time of the furnishing of this notice; and

(vii) The name, address, and telephone number of the plan administrator (or other fiduciary) from whom a participant or beneficiary may obtain additional information concerning the termination.

(2) *Manner of furnishing notice.* (i) For purposes of paragraph (e)(1) of this section, a notice shall be furnished to each participant or beneficiary in accordance with the requirements of § 2520.104b–1(b)(1) of this chapter to the last known address of the participant or beneficiary; and

(ii) In the case of a notice that is returned to the plan as undeliverable, the plan fiduciary shall, consistent with its duties under section 404(a)(1) of ERISA, take steps to locate the participant or beneficiary and provide notice prior to making the rollover distribution. If, after such steps, the fiduciary is unsuccessful in locating and furnishing notice to a participant or

beneficiary, the participant or beneficiary shall be deemed to have been furnished the notice and to have failed to make an election within 30 days for purposes of paragraph (b)(2) of this section.

BILLING CODE 4150–29–P

APPENDIX TO § 2550.404a-3

NOTICE OF PLAN TERMINATION

[*Date of notice*]

[*Name and last known address of plan participant or beneficiary*]

Re: [*Name of plan*]

Dear [*Name of plan participant or beneficiary*]:

This notice is to inform you that [*name of the plan*] (the Plan) has been terminated and we are in the process of winding it up.

Your account balance in the Plan on [*date*] is/was [*account balance*]. We will be distributing this money as permitted under the terms of the Plan and federal regulations. [*If applicable, insert the following sentence:* The actual amount of your distribution may be more or less than the amount stated in this notice depending on investment gains or losses and the administrative cost of terminating your plan and distributing your benefits.]

Your distribution options under the Plan are [*add a description of the Plan's distribution options*]. It is very important that you elect one of these forms of distribution and inform us of your election. The process for informing us of this election is [*enter a description of the Plan's election process*].

[*If this notice is for a participant or participant's spouse, complete and include the following paragraph.*]

If you do not make an election within 30 days from your receipt of this notice, your account balance will be transferred directly to an individual retirement plan. {*If the name of the provider of the individual retirement plan is known, include the following sentence:* The name of the provider of the individual retirement plan is [*name, address and phone number of the individual retirement plan provider*].} Pursuant to federal law, your money in the individual retirement plan would then be invested in an investment product designed to preserve principal and provide a reasonable rate of return and liquidity. {*If fee information is known, include the following sentence:* Should your money be transferred into an individual retirement plan, [*enter the name of the financial institution*] charges the following fees for its services: [*add statement of fees, if any, that will be paid from the participant or beneficiary's individual retirement plan*].}

[*If this notice is for a beneficiary other than the participant's spouse, complete and include the paragraph below rather than the paragraph above.*]

If you do not make an election within 30 days from your receipt of this notice, your account balance will be transferred directly to an account maintained by [*name, address and phone number of the financial institution if known, otherwise insert the following language*: a bank or insurance company or other similar financial institution.]. Pursuant to federal law, your money would then be invested in an investment product designed to preserve principal and provide a reasonable rate of return and liquidity. {*If fee information is known, include the following sentence:* Should your money be transferred into such an account, [*enter the name of the financial institution*] charges the following fees for its services: [*add statement of fees, if any, that will be paid from the participant or beneficiary's individual retirement plan*].}

For more information about the termination, your account balance, or distribution options, please contact [*name, address, and telephone number of the plan administrator or other appropriate contact person*].

Sincerely,

[*Name of plan administrator or appropriate designee*]

Signed at Washington, DC, this 2nd day of March, 2005.

Ann L. Combs,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 05–4464 Filed 3–9–05; 8:45 am]

BILLING CODE 4150–29–C

DEPARTMENT OF LABOR

Employee Benefits Security Administration

RIN 1210–zA05

[Application No. D–11201]

Proposed Class Exemption for Services Provided in Connection With the Termination of Abandoned Individual Account Plans

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice of proposed class exemption.

SUMMARY: This document contains a notice of a proposed class exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and from certain taxes imposed by the Internal Revenue Code of 1986, as amended (the Code). If granted, the proposed class exemption would permit a ''qualified termination administrator'' (QTA) of an individual account plan that has been abandoned by its sponsoring employer to select itself or an affiliate to provide services to the plan in connection with the termination of the plan, and to pay itself or an affiliate fees for those services. The proposed exemption also would permit a qualified termination administrator of an abandoned plan to: Designate itself or an affiliate as provider of an individual retirement plan or other account; select a proprietary investment product as the initial investment for the rollover distribution of benefits for a participant or beneficiary who fails to make an election regarding the disposition of such benefits; and pay itself or its affiliate fees in connection therewith. This exemption is being proposed in connection with the Department's proposed regulation to be promulgated at 29 CFR 2578, relating to the Termination of Abandoned Individual Account Plans, and 2550.404a–3, relating to the Safe Harbor For Rollover Distributions from Terminated Individual Account Plans, which are being published simultaneously in this issue of the **Federal Register**. The proposed exemption, if granted, would affect individual account plans, the participants and beneficiaries of such plans, certain plan service providers, and the fiduciaries of such plans.

DATES: Written comments and requests for a public hearing on the proposed exemption shall be submitted to the Department on or before May 9, 2005.

ADDRESSES: All written comments and requests for a public hearing (preferably three (3) copies) concerning the proposed class exemption should be sent to: U.S. Department of Labor, Employee Benefits Security Administration, Room N–5649, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Plan Termination Class Exemption Proposal. Comments and requests for a hearing alternatively may be sent by fax to (202) 219–0204 or submitted electronically to *moffitt.betty@dol.gov* by the end of the comment period. All comments received will be available for public inspection in EBSA's Public Documents Room, N–1513, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Brian Buyniski, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, Washington, DC 20210, (202) 693–8540. This is not a toll free number.

SUPPLEMENTARY INFORMATION: This document contains a notice that the Department is proposing a class exemption from the restrictions of sections 406(a)(1)(A) through (D), 406(b)(1) and (b)(2) of the Act and from the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The exemption proposed herein is being proposed by the Department on its own motion pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR 2570, subpart B (55 FR 32836, August 10, 1990).[1]

Executive Order 12866

Under Executive Order 12866, the Department must determine whether the regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that the proposed exemption is significant for ''raising novel policy issues'' under section 3(f)(4) of the Executive Order. Accordingly, the proposed exemption has been reviewed by OMB.

The proposed class exemption is being published concurrently with a proposed regulation entitled, ''Termination of Abandoned Individual Account Plans.'' The proposed exemption permits a QTA of an individual account plan that has been abandoned by its sponsoring employer to select itself or an affiliate to provide services to the plan in connection with the termination of the plan, and to pay itself or an affiliate fees for those services, provided that such fees are consistent with the conditions of the proposed exemption. The proposed exemption would also permit a QTA to: Designate itself or an affiliate as a provider of an individual retirement plan or other account; select a proprietary investment product as the initial investment for the rollover distribution of benefits for a participant or beneficiary who fails to make an election regarding the disposition of such benefits; and, pay itself or its affiliate in connection with the rollover. The Department has assumed that all QTAs will take advantage of the proposed class exemption.

The proposed exemption would provide conditional relief for QTAs that terminate and wind up the affairs of plans that have been abandoned by the plan sponsor. Because compliance with the proposed regulation is a condition of the proposed exemption, the proposed exemption will only be used in connection with the proposed regulation. In general, the costs and benefits that may be associated with compliance with the proposed exemption have been described and quantified in connection with the economic impact of the proposed regulation.

Certain other costs may be incurred in connection with the conditions of the proposed exemption by QTAs that

[1] Section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996) generally transferred the authority of the Secretary of the Treasury to issue exemptions under section 4975(c)(2) of the Code to the Secretary of Labor.

For purposes of this proposed exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

select their own proprietary products or those of an affiliate for investment of individual retirement plans and other accounts. These costs would not otherwise be incurred by the QTA absent the conditions of the prohibited transaction exemption. For example, a QTA that rolls over an individual account from an abandoned plan into an individual retirement plan is not permitted, under the exemption, to charge a sales commission in connection with the investment product. In addition, the Regulated Financial Institution is limited with regard to certain fees and expenses that may be charged against the individual retirement plan or other account. Foregone commissions and fees may correspond to costs for some Regulated Financial Institutions.

The Department has no basis for estimating the impact of the wide array of factors that could affect these particular costs, such as the amount of fees or expenses that might not be fully charged to the individual retirement plans or other accounts, the extent to which QTAs will use one or more proprietary products, the number of account balances that could be rolled over into individual retirement plans or other accounts, or the aggregate effect of unpaid sales commissions. Therefore, the Department has not estimated a cost for these provisions of the proposed exemption. However, QTAs are in no event required to make use of individual retirement plans or other accounts offered by the QTA or an affiliate. In any case, it is likely that a QTA will use its own or an affiliate's individual retirement plans or accounts and investment products only if it is financially beneficial to do so, for example, as a way to retain deposits and increase earnings.

Paperwork Reduction Act

As part of its continuing effort to reduce paperwork and respondent burden, the Department of Labor conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data will be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

The proposed exemption, if granted, will only be used by certain QTAs that also take advantage of the proposed regulation on Termination of Abandoned Individual Account Plans, if finalized, published elsewhere in this issue of the **Federal Register**. The Department has combined the burdens for the two proposed rules, along with the burden for the proposed regulation, Safe Harbor for Rollover Distributions From Terminated Individual Account Plans, also published today, under one Information Collection Request (ICR). By combining the three collections of information, the Department believes that the general public will gain a better understanding of the burden impact as it relates to terminating plans. The specific burden for the proposed exemption includes a recordkeeping requirement for a QTA that terminates an abandoned plan and chooses to roll over the account balances of missing or nonresponsive participants into individual retirement plans offered by the QTA or an affiliate of the QTA. The hour and cost burdens for the ICR are described more fully in the preamble to the proposed regulation, Termination of Abandoned Individual Account Plans under the section on The Paperwork Reduction Act.

Background

Thousands of individual account plans have, for a variety of reasons, been abandoned by their sponsors. Financial institutions holding the assets of these abandoned plans often do not have the authority or incentive to perform the responsibilities otherwise required of the plan administrator with respect to such plans. At the same time, participants and beneficiaries are frequently unable to access their plan benefits. As a result, the assets of many of these plans are diminished by ongoing administrative costs, rather than being paid to the plan's participants and beneficiaries.

Over the past few years, the Department of Labor's Employee Benefits Security Administration (EBSA) has seen an increase in the number of requests for assistance from participants who are unable to obtain access to the money in their individual account plans. According to these participants, even though a bank or other service provider of the plan may be holding their money, neither the bank nor the participants are able to locate anyone with authority under the plan to authorize benefit distributions.

In some cases, plan abandonment occurs when the sponsoring employer ceases to exist by virtue of a formal bankruptcy proceeding. In other cases, abandonment occurs because the plan sponsor has been incarcerated, died, or simply fled the country. Whatever the causes of abandonment, participants in these so-called ''orphan plan'' or ''abandoned plan'' situations are effectively denied access to their benefits and are otherwise unable to exercise their rights as guaranteed under ERISA. At the same time, benefits in such plans are at risk of being significantly diminished by ongoing administrative expenses, rather than being distributed to participants and beneficiaries.

EBSA responded to these requests for assistance with a series of enforcement initiatives, including the National Enforcement Project on Orphan Plans (NEPOP), which began in 1999. NEPOP focuses primarily on identifying abandoned plans, locating their fiduciaries, if possible, and requiring those fiduciaries to manage and terminate (including making benefit distributions to participants and beneficiaries) the plans in accordance with ERISA. When no fiduciary can be found, the Department often requests that a Federal court appoint an independent fiduciary to manage, terminate, and distribute the assets of the plan.

During 2002, the ERISA Advisory Council created the Working Group on Orphan Plans to study the causes and extent of the orphan plan problem. On November 8, 2002, after public hearings and testimony, the Advisory Council issued a report, entitled *Report of the Working Group on Orphan Plans,* concluding that the problems posed by abandoned plans are very serious and substantial for plan participants, administrators, and the government. In particular, the Report states that ''plan participants may suffer economic hardship as a result of their inability to obtain a distribution from an orphan plan; plan service providers may be besieged with requests for distributions, although unauthorized to act; and the government may be forced to handle the termination of hundreds or thousands of plans that have been abandoned.'' Although the Advisory Council's Report estimated that abandoned plans currently represent only about two percent of all defined contribution plans and less than one percent of total plan assets for such plans, the Report also indicated that the orphan plan problem may grow in difficult economic times.

Taking into account the problem of abandoned plans and the Department's efforts to date, the Advisory Council generally recommended measures (whether regulatory, legislative, or both) to encourage service providers to voluntarily terminate abandoned plans and distribute assets to participants and

beneficiaries. Specific recommendations of the Advisory Council included new regulations setting forth criteria for determining when a plan is abandoned, procedures for terminating abandoned plans and distributing assets, and rules defining who may terminate and wind up such plans.

Having carefully considered the recommendations of the Advisory Council, as well as the comments of the various parties testifying before the Council's Working Group on Orphan Plans, the Department is publishing in this issue of the **Federal Register** proposed regulations addressing these issues to be codified at 29 CFR parts 2550 and 2578 (Termination of Abandoned Individual Account Plans). One proposed regulation would establish a regulatory framework pursuant to which financial institutions and other entities holding the assets of an abandoned individual account plan can take action to terminate the plan and distribute benefits to the plan's participants and beneficiaries, with limited liability. The other proposed regulation would establish a simplified method for filing a special terminal report for abandoned individual account plans. Lastly, the third regulation would provide a safe harbor for rollover distributions from all terminated plans, whether abandoned or not, on behalf of participants who fail to elect a specific distribution.

The Department notes that a trustee or issuer of an individual retirement plan within the meaning of section 7701(a)(37) of the Code that qualifies under the proposed Termination of Abandoned Individual Account Plans regulation (hereinafter the QTA Regulation) as a ''qualified termination administrator'' [2] may select itself or an affiliate to provide termination services to the plan which will result in the receipt of compensation by the QTA or its affiliate. Moreover, if a participant or beneficiary of the abandoned plan fails to make a timely election as to the form of distribution of his or her benefits pursuant to the proposed QTA Regulation, the QTA will be required to distribute the participant's or beneficiary's benefits in the form of a direct rollover into an individual retirement plan, or to an account (other than an individual retirement plan in the case of a rollover on behalf of a non-spousal beneficiary), if the abandoned plan was intended to be in compliance with section 401(a) of the Code.

If the QTA is a financial institution or an affiliate of a financial institution, and is eligible to establish and maintain individual retirement plans, it may designate itself or its affiliate as the individual retirement plan provider or other account provider. In addition, the QTA may invest the rollover distribution in the individual retirement plan or other account into a proprietary investment product.

In this regard, section 406(a)(1) of the Act prohibits in part, a fiduciary of a plan from causing the plan to engage in a transaction that constitutes a direct or an indirect sale, exchange or leasing of any property between the plan and a party in interest; lending of money or other extension of credit between the plan and a party in interest; furnishing of goods, services, or facilities between the plan and a party in interest; and a transfer to, or use by or for the benefit of, a party in interest of any assets of the plan. Section 406(b)(1) and (b)(2) of the Act prohibits a fiduciary with respect to a plan from dealing with the assets of the plan in his own interest or for his own account; and from acting in his individual or in any other capacity in any transaction involving the plan on behalf of a party (or representing a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries.

A violation of section 406(a) and/or (b) of the Act may occur if the QTA determines to pay itself or an affiliate for services rendered to the plan from the assets of an abandoned plan. Also, additional violations may occur if the QTA designates itself or an affiliate as the provider of an individual retirement plan or other account established for the benefit of participants and beneficiaries who do not make an election as to the form of distribution. Finally, a prohibited transaction may occur if the QTA determines to invest the rollover distribution in the QTA's own proprietary investment product.

Section 408(b)(2) of the Act provides a conditional statutory exemption for the provision of services by a party in interest to a plan and the payment of reasonable compensation to the party in interest. However, section 408(b)(2) of the Act does not provide relief from the prohibitions described in section 406(b) of the Act.[3]

The Department, therefore, is proposing this class exemption which, if granted, would provide conditional relief for a QTA of an abandoned individual account plan to use its authority to select itself or an affiliate to provide services in connection with the termination of the plan, and to pay itself or an affiliate fees for the services performed. With respect to the participants and beneficiaries who failed to elect a distribution option, the proposed exemption also would permit a qualified termination administrator of an abandoned individual account plan to designate itself or an affiliate as an individual retirement plan provider or other account provider and to select the QTA's (or an affiliate's) proprietary investment product for rollover distributions of the benefits of a participant or beneficiary. Lastly, the proposal would provide relief for the QTA to pay itself or its affiliate fees in connection with such transactions.

Description of the Proposed Exemption

Section I describes the transactions that are covered by the proposed exemption. Under section I(a), relief is provided from the restrictions of sections 406(a)(1)(A) through (D), 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, for a ''qualified termination administrator'' within the meaning of section V(a) of this proposed exemption, to use its authority in connection with the termination of an abandoned individual account plan to select itself or an affiliate to provide services to the plan and to pay itself or an affiliate fees for services provided as a QTA.

Under section I(b), the proposed exemption provides relief from the restrictions of sections 406(a)(1)(A) through (D), 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, for a QTA, to use its authority in connection with the termination of an abandoned individual account plan to: (i) Designate itself or an affiliate as provider of an individual retirement plan or other account to receive the account balance of a participant that does not provide direction as to the disposition of such assets, (ii) make the initial investment of the distributed proceeds in a proprietary investment product, (iii) receive fees in connection with the establishment or maintenance of the individual retirement plan or other account, and (iv) receive investment fees as a result of the investment of the individual retirement plan or other account's assets in a proprietary investment product in which the QTA or an affiliate has an interest.

[2] See proposed regulation 29 CFR 2578.1(g), which states that an eligible qualified termination administrator is qualified only if it holds assets of the plan that is considered abandoned and if it is eligible to serve as an individual retirement plan trustee or issuer under section 7701(a)(37) of the Code.

[3] *See* 29 CFR section 2550.408b–2(e).

The following conditions would apply to a transaction described in section I(a) of the proposed exemption. The QTA must comply with the requirements of the proposed QTA Regulation, which is published elsewhere in this issue of the **Federal Register**.

Under the proposal, fees and expenses paid to the QTA and its affiliate: (i) Are consistent with industry rates for such or similar services, based on the experience of the QTA, and (ii) are not in excess of rates charged by the QTA (or its affiliate) for the same or similar services provided to customers that are not individual account plans terminated pursuant to the proposed QTA Regulation, if the QTA (or its affiliate) provides the same or similar services to such other customers. The reference to ''industry rates'' and ''based on the experience of the QTA'' is intended to enable a QTA, who possesses knowledge about the services needed for a plan termination and industry rates for such or similar services, to engage or retain itself, an affiliate, and other service providers without going through a potentially timely and costly bidding process. By permitting QTAs to rely on their own industry expertise, the Department believes QTAs can minimize plan termination costs and, thereby, maximize the benefits payable to a plan's participants and beneficiaries.

The following conditions would apply to a transaction described in I(b) of the proposed exemption. The conditions of the proposed QTA Regulation must be met. The QTA must also inform the participant or beneficiary in the notice required by the proposed QTA Regulation that: (1) Absent his or her election within the 30-day period from receipt of the notice to be provided by the QTA to inform participants of their election options, the QTA will directly roll over the account balance of the participant or beneficiary to an individual retirement plan or other account offered by the QTA or its affiliate; and (2) the account balance may be invested in the QTA's own proprietary investment product, which is designed to preserve principal and provide a reasonable rate of return and liquidity.

Under the proposal, the individual retirement plan or other account must be established and maintained for the exclusive benefit of the individual retirement plan or other account holder, his or her spouse or their beneficiaries.

The terms of the individual retirement plan or other account, including the fees and expenses for establishing and maintaining the individual retirement plan or other account, must be no less favorable than those available to comparable individual retirement plans or other accounts established for reasons other than the receipt of a rollover distribution described in the proposed QTA Regulation.

The proposal requires that the distribution must be invested in an Eligible Investment Product, as defined in section V(c) of this proposed exemption. The rate of return or the investment performance received by the individual retirement plan or other account from an investment product must be no less than that received by comparable individual retirement plans or other accounts that are not established pursuant to the proposed QTA Regulation but are invested in the same product. For example, the rate of return received by the individual retirement plan for an investment in a one-year certificate of deposit which is an Eligible Investment Product cannot be less than the rate of return received by an individual retirement plan or other account established for reasons other than the receipt of a rollover distribution that is invested in an identical one-year certificate of deposit.

The proposal does not permit the individual retirement plan or other account to pay a sales commission in connection with the acquisition of an Eligible Investment Product.

Under the proposed exemption, the individual retirement plan or other account holder must be able to, within a reasonable period of time after his or her request and without penalty to the principal amount of the investment, transfer his or her individual retirement plan or other account balance to a different investment offered by the QTA or its affiliate. Also, the individual retirement plan holder may transfer his or her individual retirement plan balance to an individual retirement plan sponsored by a different financial institution. Similarly, the other account holder may transfer his or her account balance to another account sponsored by a different financial institution.

Under the proposal, fees and expenses attendant to the individual retirement plan or other account, including the investment of the assets of such plan or account, (*e.g.*, establishment charges, maintenance fees, investment expenses, termination costs, and surrender charges) must not exceed the fees and expenses charged by the QTA for comparable individual retirement plans or other accounts established for reasons other than the receipt of a rollover distribution made pursuant to the proposed QTA regulation. Additionally, fees and expenses attendant to the individual retirement plan or other account, other than establishment charges, may be charged only against the income earned by the individual retirement plan or other account. Finally, fees and expenses shall not exceed reasonable compensation within the meaning of section 4975(d)(2) of the Code.

Section IV of the proposed exemption contains a recordkeeping requirement. The QTA must maintain records to enable certain persons to determine whether the applicable conditions of the class exemption have been met. The records must be available for examination by the IRS, the Department, and any account holder or duly authorized representative of such account holder of an individual retirement plan or other account, for at least six years from the date the QTA provides notice to the Department of its determination of plan abandonment and its election to serve as the QTA.

Lastly, section V of the proposed exemption contains certain definitions. The term ''qualified termination administrator'' is defined in section V(a) as an entity that is eligible to serve as a trustee or issuer of an individual retirement plan within the meaning of section 7701(a)(37) of the Code and that holds the assets of the abandoned plan.

The term ''Eligible Investment Product'' is defined in section V(c) to mean an investment product designed to preserve principal and provide a reasonable rate of return, whether or not such return is guaranteed, consistent with liquidity. In this regard, the product must be offered by a Regulated Financial Institution as defined in section V(d) and must seek to maintain, over the term of the investment, the dollar value that is equal to the amount invested in the product by the individual retirement plan or other account. Such term includes money market funds maintained by registered investment companies, and interest-bearing savings accounts and certificates of deposit of a bank or similar financial institution. In addition, the term includes stable value products issued by a financial institution that are fully benefit-responsive to the individual retirement plan or other account holder. For purposes of this proposed class exemption, the term ''benefit responsive'' means a stable value product that provides a liquidity guarantee by a financially responsible third party of principal and previously accrued interest for liquidations or transfers initiated by the individual retirement plan or other account holder exercising his or her right to withdraw or transfer funds under the terms of an

arrangement that does not include substantial restrictions to the account holder's access to the individual retirement plan or other account assets.

The term ''Regulated Financial Institution'' is defined in section V(d) to mean an entity that: (i) Is subject to state or federal regulation, and (ii) is a bank or savings association, the deposits of which are insured by the Federal Deposit Insurance Corporation; a credit union, the member accounts of which are insured within the meaning of section 101(7) of the Federal Credit Union Act; an insurance company, the products of which are protected by state guaranty associations; or an investment company registered under the Investment Company Act of 1940.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which require, among other things, that a fiduciary discharge his duties with respect to the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act;

(2) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of plans and their participants and beneficiaries and protective of the rights of participants and beneficiaries of such plans;

(3) If granted, the proposed exemption will be applicable to a transaction only if the conditions specified in the exemption are met; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments

All interested persons are invited to submit written comments or requests for a public hearing on the proposed exemption to the address and within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection with the referenced application at the above address.

Proposed Exemption

The Department has under consideration the grant of the following class exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

I. Transactions

(a) The restrictions of sections 406(a)(1)(A) through (D), 406(b)(1) and 406(b)(2) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to a QTA, (as defined in section V (a) of this proposed class exemption), using its authority in connection with the termination of an abandoned individual account plan pursuant to the proposed QTA Regulation to:

(1) Select itself or an affiliate to provide services to the plan, and

(2) Receive fees for the services performed as a QTA, provided that the conditions set forth in sections II and IV of this proposed exemption are satisfied.

(b) The restrictions of sections 406(a)(1)(A) through (D), 406(b)(1) and 406(b)(2) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to a QTA, using its authority in connection with the termination of an abandoned individual account plan pursuant to the proposed QTA Regulation to:

(1) Designate itself or an affiliate as provider of an individual retirement plan or, under the limited circumstances described in section (d)(1) of the Rollover Safe Harbor Regulation for Terminated Plans (20 CFR 2550.404a–3) as provider of an account (other than an individual retirement plan) for the rollover of the account balance of the participant or beneficiary of the abandoned individual account plan who does not provide direction as to the disposition of such assets;

(2) Make the initial investment of the account balance of the participant or beneficiary in the QTA's or its affiliate's proprietary investment product;

(3) Receive fees in connection with the establishment or maintenance of the individual retirement plan or other account; and

(4) Pay itself or an affiliate investment fees as a result of the investment of the individual retirement plan or other account assets in the QTA's or its affiliate's proprietary investment product, provided that the conditions set forth in sections III and IV of this exemption are satisfied.

II. Conditions for Provision of Termination Services and Receipt of Fees in Connection Therewith

(a) The requirements of the proposed QTA Regulation are met. The QTA provides, in a timely manner, any other reasonably available information requested by the Department regarding the proposed termination.

(b) Fees and expenses paid to the QTA, and its affiliate, in connection with the termination of the plan and the distribution of benefits:

(1) Are consistent with industry rates for such or similar services, based on the experience of the QTA, and

(2) Are not in excess of rates charged by the QTA (or affiliate) for the same or similar services provided to customers that are not plans terminated pursuant to the proposed QTA regulation, if the QTA (or affiliate) provides the same or similar services to such other customers.

III. Conditions for Rollover Distributions

(a) The conditions of the proposed QTA Regulation are met.

(b) In connection with the notice to participants and beneficiaries described in the proposed QTA Regulation, a statement explaining that:

(1) If the participant or beneficiary fails to make an election within the 30-day period referenced in the proposed QTA Regulation, the QTA will directly roll over the account balance to an individual retirement plan or other account offered by the QTA or its affiliate;

(2) The proceeds of the distribution may be invested in the QTA's (or affiliate's) own proprietary investment product, which is designed to preserve principal and provide a reasonable rate of return and liquidity.

(c) The individual retirement plan or other account is established and maintained for the exclusive benefit of the individual retirement plan account holder or other account holder, his or her spouse or their beneficiaries.

(d) The terms of the individual retirement plan or other account,

including the fees and expenses for establishing and maintaining the individual retirement plan or other account, are no less favorable than those available to comparable individual retirement plans or other accounts established for reasons other than the receipt of a rollover distribution described in the proposed QTA Regulation.

(e) The distribution proceeds are invested in an Eligible Investment Product(s), as defined in section V(c) of this proposed class exemption.

(f) The rate of return or the investment performance of the individual retirement plan or other account is no less favorable than the rate of return or investment performance of an identical investment(s) that could have been made at the same time by comparable individual retirement plans or other accounts established for reasons other than the receipt of a rollover distribution described in the proposed QTA Regulation.

(g) The individual retirement plan or other account does not pay a sales commission in connection with the acquisition of an Eligible Investment Product.

(h) The individual retirement plan account holder or other account holder may, within a reasonable period of time after his or her request and without penalty to the principal amount of the investment, transfer his or her account balance to a different investment offered by the QTA or its affiliate. The individual retirement plan account holder may also transfer his or her balance to an individual retirement plan sponsored at a different financial institution or in the case of an other account holder, to an account sponsored at a different financial institution.

(i)(1) Fees and expenses attendant to the individual retirement plan or other account, including the investment of the assets of such plan or account, (*e.g.*, establishment charges, maintenance fees, investment expenses, termination costs, and surrender charges) shall not exceed the fees and expenses charged by the QTA for comparable individual retirement plans or other accounts established for reasons other than the receipt of a rollover distribution made pursuant to the proposed QTA Regulation;

(2) Fees and expenses attendant to the individual retirement plan or other account, with the exception of establishment charges, may be charged only against the income earned by the individual retirement plan or other account; and

(3) Fees and expenses attendant to the individual retirement plan or other account are not in excess of reasonable compensation within the meaning of section 4975(d)(2) of the Code.

IV. Recordkeeping

(a) The QTA maintains or causes to be maintained, for a period of six (6) years from the date the QTA provides notice to the Department of its determination of plan abandonment and its election to serve as the QTA described in the proposed QTA Regulation, the records necessary to enable the persons described in paragraph (b) of this section to determine whether the applicable conditions of this exemption have been met. Such records must be readily available to assure accessibility by the persons identified in paragraph (b) of this section.

(b) Notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (a) of this section are unconditionally available at their customary location for examination during normal business hours by—

(1) Any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service; and

(2) Any account holder of an individual retirement plan or other account established pursuant to this exemption, or any duly authorized representative of such account holder.

(c) A prohibited transaction will not be considered to have occurred if the records necessary to enable the persons described in paragraph (a) to determine whether the conditions of the exemption have been met are lost or destroyed, due to circumstances beyond the control of the QTA, then no prohibited transaction will be considered to have occurred solely on the basis of the unavailability of those records, and no party in interest other than the QTA shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by sections 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (b).

(3) None of the persons described in paragraph (b)(2) of this section shall be authorized to examine the trade secrets of the QTA or its affiliates or commercial or financial information that is privileged or confidential.

V. Definitions

(a) A termination administrator is ''qualified'' for purposes of the proposed QTA Regulation and this proposed exemption if:

(1) The QTA is eligible to serve as a trustee or issuer of an individual retirement plan or other account, within the meaning of section 7701(a)(37) of the Code, and

(2) The QTA holds plan assets of the plan that is considered abandoned.

(b) The term ''individual retirement plan'' means an individual retirement plan described in section 7701(a)(37) of the Code. For purposes of this exemption, the term individual retirement plan shall not include an individual retirement plan which is an employee benefit plan covered by Title I of ERISA.

(c) The term ''Eligible Investment Product'' means an investment product designed to preserve principal and provide a reasonable rate of return, whether or not such return is guaranteed, consistent with liquidity. For this purpose, the product must be offered by a Regulated Financial Institution as defined in paragraph (d) of this section and shall seek to maintain, over the term of the investment, the dollar value that is equal to the amount invested in the product by the individual retirement plan or other account. Such term includes money market funds maintained by registered investment companies, and interest-bearing savings accounts and certificates of deposit of a bank or similar financial institution. In addition, the term includes ''stable value products'' issued by a financial institution that are fully benefit-responsive to the individual retirement plan account holder or other account holder, *i.e.,* that provide a liquidity guarantee by a financially responsible third party of principal and previously accrued interest for liquidations or transfers initiated by the individual retirement plan account holder or other account holder exercising his or her right to withdraw or transfer funds under the terms of an arrangement that does not include substantial restrictions to the account holder access to the individual retirement plan or other account's assets.

(d) The term ''Regulated Financial Institution'' means an entity that: (i) Is subject to state or federal regulation, and (ii) is a bank or savings association, the deposits of which are insured by the Federal Deposit Insurance Corporation; a credit union, the member accounts of which are insured within the meaning of section 101(7) of the Federal Credit Union Act; an insurance company, the products of which are protected by state guaranty associations; or an investment company registered under the Investment Company Act of 1940.

(e) An ''affiliate'' of a person includes:

(1) Any person directly or indirectly controlling, controlled by, or under common control with, the person; or

(2) Any officer, director, partner or employee of the person.

(f) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(g) The term ''individual account plan'' means an individual account plan as that term is defined in section 3(34) of the Act.

Signed at Washington, DC, this 23rd day of February, 2005.

Ivan L. Strasfeld,

Director of Exemption, Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 05–4465 Filed 3–9–05; 8:45 am]

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Federal Register

Thursday,
March 10, 2005

Part III

Department of Homeland Security

Coast Guard

46 CFR Part 401

Rates for Pilotage on the Great Lakes; Interim Rule

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 401

[USCG–2002–11288]

RIN 1625–AA38 (Formerly RIN 2115–AG30)

Rates for Pilotage on the Great Lakes

AGENCY: Coast Guard, Department of Homeland Security.

ACTION: Interim rule; request for comments.

SUMMARY: The Coast Guard is changing the rates for pilotage on the Great Lakes. The last full-rate adjustment for pilotage on the Great Lakes became effective in August 2001, and a partial-rate adjustment became effective January 12, 2004. This change is necessary both to generate sufficient revenues for allowable expenses and to ensure that the pilots receive target compensation.

DATES: This interim rule is effective April 11, 2005. Comments and related material must reach the Docket Management Facility on or before June 8, 2005.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2002–11288 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) Web site: *http://dms.dot.gov.*

(2) Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

(3) Fax: 202–493–2251.

(4) Delivery: Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(5) Federal eRulemaking Portal: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Paul Wasserman, Director, Great Lakes Pilotage, Office of Waterways Management Plans and Policy (G–MWP), U.S. Coast Guard, telephone 202–267–2856 or e-mail him at *pwasserman@comdt.uscg.mil.* If you have questions on viewing or submitting material to the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION:

I. Preamble Organization

This preamble is organized as follows:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://dms.dot.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this rulemaking (USCG–2002–11288), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this rule in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on

April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Program History

The U.S. waters of the Great Lakes and St. Lawrence Seaway to Snell Lock is divided into three pilotage districts which are further divided into Areas. Each district is administered by an Association (any organization that holds or held a Certificate of Authorization issued by the Director of Great Lakes Pilotage to operate a pilotage pool on the Great Lakes). District One, which contains Areas 1 and 2, includes all U.S. waters of the St. Lawrence River between the international boundary at St. Regis and a line at the head of the river running (at approximately 127° True) between Carruthers Point Light and South Side Light extended to the New York shore. District Two, containing Areas 4 and 5, includes all U.S. waters of Lake Erie westward of a line running (at approximately 026° True) from Sandusky Pierhead Light at Cedar Point to Southeast Shoal Light; all waters contained within the arc of a circle of one mile radius eastward of Sandusky Pierhead Light; the Detroit River; Lake St. Clair; the St. Clair River, and northern approaches thereto south of latitude 43°05′30″ N. District Three, containing Areas 6, 7, and 8, includes all U.S. waters of the St. Mary's River, Sault Ste. Marie Locks and approaches thereto between latitude 45°59′ N at the southern approach and longitude 84°33′ W at the northern approach.

The Great Lakes Pilotage Act of 1960 requires foreign flag vessels and U.S. flag vessels in foreign trade to use a federal Great Lakes Registered Pilot while transiting the St. Lawrence Seaway and the Great Lakes system. 46 U.S.C. Chapter 93. The Coast Guard is responsible for administering this pilotage program, which includes setting rates for pilotage service.

The Coast Guard pilotage regulations require annual reviews of pilotage rates and the creation of a new rate at least once every five years, or sooner, if the annual review shows a need. 49 CFR part 404. In order to facilitate this process, each pilot association must provide annual financial reports to the Coast Guard. The Coast Guard contract accountant uses these reports, in connection with annual reviews of each association's records, to prepare independent financial reports. The Coast Guard uses these reports in its annual evaluation of whether a rate adjustment is necessary and appropriate.

The last full-rate adjustment became effective in August 2001, and a partial-rate adjustment became effective on January 12, 2004. The 2004 partial-rate adjustment was based on calculations using 2001 financial data.

The rates in this interim rule are based on data from the ''Independent Accountant's Reports on Applying Agreed Upon Procedures, Financial Statement Analysis, Supplementary Financial Information and Report of Findings and Recommendations 31 December 2002'' for each District and the 2003 AMO union contracts. The Coast Guard followed the ratemaking analyses and methodology in 46 CFR part 404 and Appendix A to that part.

To determine whether projected traffic under the current rate structure is adequate to raise enough revenue to cover all costs and permit the pilots to earn target pilot compensation, the rate-setting methodology looks at projected and target pilot compensation, necessary and reasonable operating expenses, return on investment, and revenue projections. (Target pilot compensation is set based on the American Maritime Officers' (AMO) union contract.)

The last full-rate adjustment became effective August 13, 2001. On January 23, 2003, the Coast Guard published a notice of proposed rulemaking (NPRM) using 2001 financial information. 68 FR 3202. That NPRM recommended a 25 percent average increase in pilotage rates. This recommended increase was based on a number of factors, including an approximately 20 percent increase in the AMO union contract, an adjustment for inflation, and other increased costs. The public was afforded many opportunities to comment—there were two public meetings and an extended comment period.

The Coast Guard got comments from the pilots, the Great Lakes maritime community, and other agencies that raised issues that had not been addressed by the Coast Guard in earlier ratemakings. These comments included the impact of pilotage rates on foreign flag shipping in the Great Lakes, the method for calculating components of the rate multiplier, target pilot compensation, and projection of revenues and expenses.

In response, the Coast Guard issued an interim rule that established a partial rate adjustment of five percent to implement the uncontested parts of the rate increase in time for the 2004 season, and allow the Coast Guard time to evaluate the remaining open issues. 68 FR 69564, Dec. 12, 2003. Corrections to this interim rule were published the following January. 69 FR 128, Jan. 2, 2004, and 69 FR 533, Jan. 6, 2004.

This interim rule will resolve the remaining rate calculation issues raised by the January 2003 NPRM. We will calculate a full rate adjustment using the methodology in 46 CFR part 404.

The rates in this interim rule are based on data from the ''Independent Accountant's Reports on Applying Agreed Upon Procedures, Financial Statement Analysis, Supplementary Financial Information and Report of Findings and Recommendations 31 December 2002'' for each District and the 2003 AMO union contracts. The Coast Guard followed the ratemaking analyses and methodology in 46 CFR part 404 and Appendix A to that part.

Discussion of Comments

Significant rules often require additional staffing and review of each document in the rulemaking process. The Coast Guard's plan to issue an SNPRM, provide time for public comment, and then issue the rate change cannot be completed before the end of the 2004 navigation season. Because of the amount of time already consumed in developing this full-rate calculation and to ensure that a new rate is not delayed beyond the start of the 2005 navigation season, the Coast Guard has decided to issue the full-rate calculation as an interim rule with an effective date just before the start of the 2005 navigation season. Issuing an interim rule will allow us to receive and evaluate comments and make any necessary changes, while at the same time, allow the new rates to become effective in time for the 2005 season.

General

The Coast Guard received 27 comments in response to the December 2003 interim rule. Many of these comments expressed concerns about the calculations done for the partial-rate adjustment in the interim rule; about what expenses were allowed; and about the monthly multiplier used to calculate the target pilot compensation. We received comments from individual pilots, pilots' Associations, and from the Great Lakes Pilotage User Group, which includes the Shipping Federation of Canada and its members, the U.S. Great Lakes Shipping Association, the Chamber of Maritime Commerce, and

the American Great Lakes Ports Association, Inc.

To the extent that NPRM comments have previously been addressed in the December 2003 IR, no further responses have been made to comments in the NPRM. However, certain issues raised in the NPRM, were deferred in the IR for further review and response in SNPRM/IR. Those issues have been included in preamble of this document.

Significance

Issue: We received several comments on the Coast Guard's determination that this rulemaking was not significant under Executive Order 12866. Three comments expressed agreement with the determination of ''not significant'' but stated the rule ''would have a substantial impact on the type and quality of pilotage services'' and ''* * * the pilots concur with the decision in the interim rate notice of the Coast Guard, the Department of Homeland Security, and the Office of Management and Budget that this proposed rate adjustment is not significant under section 3(f) of Executive Order 12866. (68 FR 69568).'' Similarly, the pilots concurred with the statement in the NPRM that, ''[w]hile these adjustments to pilotage rates may seem relatively large they actually represent a small change to the overall cost of moving these vessels through the St. Lawrence Seaway System.'' (68 FR 3213).

One comment, disagreeing with the ''not significant'' determination, repeated from its earlier comments that the proposed rate increase was a ''significant regulatory action,'' under Executive Order 12866 and thus requires an economic analysis of its impact.

Response: Although this rulemaking is not economically significant under Executive Order 12866, OMB has determined that it is a significant rulemaking action and has reviewed it under that Order.

The Coast Guard contracted for an economic analysis of rate changes for pilotage on the Great Lakes and it is available for review in the docket. An analysis of the changes in this interim rule is set out in the Regulatory Evaluation of this preamble.

Immediate Rate Implementation

Issue: In the 2003 interim rule, we said we planned to publish a supplemental notice of proposed rulemaking (SNPRM) with an opportunity to comment before effecting a permanent rate adjustment during the Spring 2004. Numerous comments urged the Coast Guard to issue new pilotage rates as an interim rule, effective immediately. One comment stated that the pilotage pools are working on an expense base that is nearly a decade old. Another comment said that the last rate adjustment in pilotage rates for the Great Lakes went into effect in August 2001. The comment further stated that ''it has been almost three years since those rates have been adjusted, even though Federal regulations require the Coast Guard to perform an annual review and adjustment of the rates.'' One comment stated this rate is long overdue and an interim final rule should be in place before the start of the 2004 navigation season.

Some comments urged the Coast Guard not to follow the December 12, 2003, interim rule with an SNPRM, stating that an SNPRM, which is not effective immediately, but rather subject to public comment, would delay the effective date of any further rule and serve no purpose except delay. Another comment stated the Coast Guard should issue the rate now as an interim final rule, effective immediately, while continuing to accept comments. One comment stated that a delay in the rate serves as a subsidy to foreign shipping companies, who have tripled their freight rates over the 2003 shipping season.

One comment stated that the ''most glaring point is that it is now the second month of 2004 and we are addressing these comments to a docket established in 2002 despite the fact that the Coast Guard is required to routinely review and establish pilotage rates on an annual basis. One of the purposes of an annual review is to adjust rates periodically on an incremental basis that avoids the impact and political fallout of large adjustments.''

One comment stated it is within the Coast Guard's administrative authority to issue this rate as an interim final rule, effective immediately, receive further comments, and later adjust the rule, if necessary.

Response: Although the NPRM and the 2003 interim rule were not ''significant'' under Executive Order 12866,this interim rule is ''significant.'' Significant rules often require additional staffing and review of each document in the rulemaking process. The Coast Guard's plan to issue an SNPRM, provide time for public comment, and then issue the rate change cannot be completed before the end of the 2004 navigation season. Because of the amount of time already consumed in developing this full-rate calculation and to ensure that a new rate is not delayed beyond the start of the 2005 navigation season, the Coast Guard has decided to issue the full-rate calculation as an interim rule with an effective date just before the start of the 2005 navigation season. The Coast Guard received comments on both the NPRM and 2003 interim rule. Issuing an interim rule will allow us to receive and evaluate additional comments and make any necessary changes before finalizing the rates, while at the same time, allowing the new rates to become effective in time for the 2005 season.

New Data for Calculation of Rate

Issue: Several comments urged the Office of Great Lakes Pilotage ''to issue an interim final rate using current rate and revenue figures for each of the three districts.''

One comment supported using updated data and believed it would result in a more accurate rate setting. However, the comment urged the Coast Guard ''to make the new data (including the AMO union contract and 2002 audits) available to the public and provide adequate time for comment.''

Another comment stated that the Coast Guard should use the most current figures available. The pilots asked that use of the most current figures not be used as a reason to recalculate, and, therefore, substantially delay the rate.

One comment also stated that ''U.S. laker mate and master compensation is currently more than 16 percent higher than target pilot compensation.'' The comment suggested that ''the Coast Guard mitigate this chronic inequity as much as possible by always using the latest available AMO union contract and the expense figures in every rate it enacts.''

Response: In calculating the proposed rate in the NPRM, and the partial rate in the interim rule, the Coast Guard used data from the 2002 AMO union contracts and the 2001 independent accountant's reports for each District. In the December 2003, interim rule, we said we were considering using the data from the 2003 AMO union contracts for our full-rate calculation. We also proposed using the most current (2002) expense and revenue figures from each of the three Districts for the full-rate calculation. We specifically requested comments on whether we should use the newer data to calculate the full-rate adjustment.

The comments on this issue supported using updated data because it would result in a more accurate rate setting, and requested that the new data be made available to the public with adequate time for comment. The Coast Guard agrees with this rationale.

In calculating this full-rate adjustment, the Coast Guard used the data from the 2003 AMO union contract and the 2002 independent accountant's reports for each District. These materials are available for review in the public docket.

Adjustment for Lost Revenue

Issue: One comment requested that an adjustment be added to this rate so that the pilots would be reimbursed for monies lost because this rate was not in effect at the beginning of the 2003 navigation season.

Response: Although the regulations provide for some adjustments during calculation of pilotage rates, those adjustments relate to correcting erroneous amounts and classifications of expenses and revenues; determining and using an inflation adjustment; and an adjustment mechanism for ''foreseeable circumstances.'' The type of adjustment suggested by the comment to recover monies for services prior to establishment of the new rate is not allowed by the current regulations. The Coast Guard has not included any adjustment for services provided by the pilots prior to the establishment of the new rate. The regulations do not provide for retroactive application of rates or prospective adjustments to fees paid by shippers or earned by pilots.

Expenses

General. The Coast Guard received comments concerning particular types of expense items. Some comments disagreed with the Coast Guard's reclassification of an expense as pilot compensation or disagreed with amounts which had been disallowed and removed from the expense base. These expense issues are discussed individually below.

Some comments related to particular expense items in previous rate calculations and reviews of Association financial statements. This section of the preamble does not discuss specific expense items incurred prior to those in the 2002 financial statements. We do, however, generally discuss various types of expenses and whether or not these expenses are normally recognized and allowed and how these types of expenses were treated in calculating this full-rate adjustment.

In determining whether expenses should be allowed, the Coast Guard applied the guidelines for recognition of expenses set out in 46 CFR 404.5(a)(1) and (a)(2). Under 46 CFR 404.5(a)(1), each expense item is evaluated to determine if it is necessary for the provision of pilotage service, and if so, what dollar amount is reasonable for that expense item. Criteria for determining reasonableness of expense items are set out in 46 CFR 404.5(a)(2), which requires that each expense item be measured against one or more of the following: Comparable or similar expenses paid by others in the maritime industry; comparable or similar expenses paid by other industries; or, U.S. Internal Revenue Service guidelines.

Source Documentation

Issue: Two comments stated that ''source documentation'' should be made available to the public so it can determine if the Coast Guard correctly applied the ratemaking analyses and methodology found in Appendix A to 46 CFR part 403 in the regulations. One comment asked that the amount and nature of legal expenses incurred by two Districts, as well as travel expenses and the amounts invoiced for services provided before August 13, 2001, for these Districts, be made public and available for comment before an SNPRM is published.

Response: The Coast Guard disagrees. Under 46 CFR 403.105(b), each Association is required to maintain ''all books, records and memoranda in a manner that will permit audit and examination by the Director or the Director's representatives.'' Section 403.105 does not require that individual source documents be submitted to the Coast Guard or made available to the public. However, any financial statements, data, and other materials the Coast Guard used in calculating the rate in this interim rule are in the docket for this rulemaking and are available for inspection and copying at the address and web site found in the **ADDRESSES** section.

Legal Fees

Issue: In response to the December 2003, interim rule, one comment stated the Coast Guard must establish a methodology for determining the appropriate amount of legal fees to justify inclusion of such fees into the expense base.

Response: The Coast Guard disagrees. Legal fees necessary for the provision of pilotage in reasonable amounts for the expense items submitted are allowed if they are substantiated as set out in 46 CFR 404.5. In 2002, all legal fees submitted as expenses were recognized and allowed.

Non-Recurring Expenses

Issue: In the interim rule, the Coast Guard discussed recurring and non-recurring expenses in conjunction with Erie Leasing Inc., and said it would review those issues before calculating a full-rate adjustment.

Response: It has done so. Erie Leasing Inc., was an affiliate company owned by the Lakes Pilot Association in District Two. It provided support services to the pilot association through its rental and leasing of pilot boats, automobiles, and office space. Erie Leasing Inc., no longer exists. It was dissolved in 2001 and its assets were sold off. Since District Two has divested itself of Erie Leasing and because we used the 2002 financial data, there are no leasing expense issues in the current calculation.

Issue: One comment stated that only recurring expenses should be included in the expense base. Another comment stated that ''including non-recurring costs will artificially inflate rates for pilotage services * * * and that the Coast Guard must perform the critical analysis to assure the segregation of those costs from the expense base.'' Another comment stated that the Coast Guard should remove non-recurring legal expenses from the expense base.

Response: Pilot Associations may incur unusually large expenses in a single year which will not recur in subsequent years. These expenses may be related to leasing of pilot boats or to the cost of operation or maintenance of purchased pilot boats, or to legal fees related to litigation, or other occasional expenses. All expenses, recurring and non-recurring, are subject to the same criteria in 46 CFR 404.5.

In these cases, the regulations do not prohibit the inclusion of non-recurring expenses in the expense base. Any expense, recurring or non-recurring, if recognized as necessary for the provision of pilotage services, and if reasonable in amount, is an allowable item in the expense base.

Lobbying Expenses

Issue: One comment asserted that the Coast Guard had not removed all lobbying expenses from the expense base used in the partial-rate calculation.

Response: This comment is incorrect. Under 46 CFR 404.5(a)(8)(ii), lobbying expenses are one of five specific expenses that are not recognized as expenses for ratemaking purposes. In the 2002 expense base submissions used in this calculation, the lobbying expenses for Districts One and Three were removed from their legal fee expense item. District Two confirmed that they had no lobbying expenses in 2002.

Subsistence Payments

Issue: One comment said the Coast Guard, ''needs to allow subsistence expenses in the rate base'' and since

they provided the Office of Great Lakes Pilotage documentation in the form of source forms and dispatch sheets, that the full amount should be allowed in the expense base.

One comment said pilots should be allowed subsistence based on the number of days worked which the District does substantiate as to time, place, and purpose (dispatching forms and source forms are submitted to the Director on a monthly basis). Further, the comment stated this methodology is acceptable for IRS purposes. IRS Rev. Proc. 2002–63. Sec. 3.03 states, ''[s]uch allowance may be paid with respect to the number of days away from home in connection with the performance of services as an employee * * *.'' The subsistence payments are paid separately and clearly identified as such. In addition, the Association can provide substantiation as to time, place, and purpose.

Response: Subsistence expenses are already accounted for, either directly or indirectly. For 2002, in District One, subsistence (per diem and travel) was reimbursed based upon adequately prepared and documented contemporaneous log entries and reported on a per trip basis. Any amount over $75 was documented as required by IRS Code requirements for substantiation of travel-related expenses. All District One travel expenses were allowed.

District Two paid their pilots a daily meals and incidental expense allowance of $38 per day, based on days available, approximately 265 days per pilot. This amount was not a reimbursement for expenses actually incurred and was disallowed because the Department of Transportation guidance incorporating the Federal Travel Regulations in 41 CFR part 301–11 do not permit payments based on days available for travel. Internal Revenue Service Regulations 1.62–2(c) and Rev. Proc. 2001–47 allow for ''reasonable business practice'' in reimbursement of per diem costs. Using Federal Travel Regulations' established allowances for Transportation workers daily meals and expenses in 41 CFR part 301–11, the per diem allowance was recalculated allowing per diem for each pilot for 200 travel days, which included days engaged in pilotage, travel between assignments, and down time at remote locations awaiting dispatch. The 200 days was based on the number of days worked according to a schedule provided by the Association.

In District Three, the pilots reported their per diem expenses to the Association but did not get reimbursed for them directly. Instead, pilot per diem was calculated according to a schedule provided by the Association, using the number of days worked. This per diem allowance approximated 200 travel days per pilot. Temporarily registered pilots were paid a per diem allowance. All pilots were reimbursed for actual hotel and temporary lodging expenses.

Travel Expenses

Issue: One comment objected to the Coast Guard reclassifying $8,600 of travel expense as pilot compensation. The comments stated these amounts represented reimbursement to pilots for attendance at board of directors meetings as well as meetings regarding other District Two business (insurance, etc.) and were reimbursements for travel expense and not compensation to the pilots.

Response: Under IRS regulation 1.62–2(c)(5), reimbursement for travel costs that are not regularly reported as expenses to employers (a non-accountable plan) are fully taxable to the employee and subject to FICA and income tax withholding. The $8,600 travel expense relates to an adjustment made to District Two's financial position as noted in the 2003 interim rule. District Two reported a travel expense of $8,600, which was reclassified as pilot compensation. These amounts represented unaccounted for payments by the Association to pilots for attendance at board of directors meetings as well as other District Two business meetings. In this case, pilots were given cash to conduct their travel without a requirement to account for the use of the money or to repay amounts not expended in connection with business. Accordingly, these amounts were properly considered compensation and not expenses.

With respect to the 2002 financial reports, the Coast Guard adjusted and reclassified travel expenses reported by District One and District Three. In District One, $10,500, and in District Three, $146,907, in pilot travel expenses, were reclassified as operating expenses from pilot compensation.

Business Promotions

Issue: One comment stated the Director, Great Lakes Pilotage, incorrectly disallowed a 2001 business promotion expense of $74 as unrelated to the provision of pilotage services. District Two provides services in addition to pilotage to lakers (vessels that operate entirely within the Great Lakes system). The revenue from lakers was $8,126 for 2001. District Two advertises and promotes this service as a means of generating revenue to offset total boat expenses.

Response: The Coast Guard disagrees. Although the comment related to 2001 expenses, the 2002 independent accountant's report disallowed similar expenses and the Coast Guard adopted the recommendation. The regulations in § 404.5(a)(5) state that, ''[f]or ratemaking purposes, the revenues and expenses generated from Association transactions that are not directly related to the provision of pilotage services are included in ratemaking calculations as long as the revenues exceed the expenses from these transactions.'' However, the promotional advertisement did not advertise the specific service to be provided, but rather contained only the name of the Association. The business promotion expenses were not specifically related to offering services other than pilotage, but were incurred generally to create goodwill in the community; therefore, the expenses will not be recognized.

Health Insurance Premiums for Retired Pilots

Issue: One comment stated that the Office of Great Lakes Pilotage needs to continue to allow health insurance paid to two individual retired pilots in the expense base.

Response: Under 46 CFR 404.5(a)(6), medical, pension, and other benefits paid to pilots, or for the benefit of pilots, by the Association are treated as pilot compensation. The amount recognized for each of these benefits is the cost of these benefits in the most recent AMO union contract for first mates on Great Lakes vessels. The AMO union contract has been used since the ratemaking methodology was amended effective June 12, 1995. The AMO union contract was used in the 1997 and 2001 final rulemaking and the 2003 interim rule. The AMO union contract also represents most first mates and masters working on the Great Lakes. To remain consistent, we will continue to use the AMO union contracts as the basis in our calculations of target pilot compensation. That contract allows for lifetime health insurance for all active and retired first mates, and the cost of health insurance for retired pilots is not otherwise provided for as ''target compensation'' in the calculated compensation base. Therefore, these costs are properly included in the expense base. In District Two, $19,494 for health insurance for retirees was added to the expense base from pilot compensation.

Accounts Receivable

Issue: One comment asked whether accounts receivable should be included in the revenue base.

Response: Accounts receivable is included in revenue on the accrual basis of accounting when calculating the revenue base. All three Districts use the accrual system, including accounts receivable in the revenue base in accordance with generally acceptable accounting principles.

Pilotage Dues

Issue: One comment stated that only 15 percent of the American Pilots Association dues expense should have been disallowed for lobbying in 2001, and that 85 percent of the dues amount should have been added back into the expense base for District Two. The comment stated, ''it is absolutely necessary that pilots belong to professional organizations which keep them informed of current changes in the pilotage industry. This is not compensation to the pilots. These dues are reasonable and proper business expenses.''

Response: All of the American Pilots Association dues expenses were not prohibited as lobbying expenses; they were reclassified as pilot compensation. American Pilots Association dues are not an expense. Union pilots who work for domestic shipping companies must pay their own dues and the amounts paid by the pilotage organizations for the benefit of pilots have been correctly reclassified as pilot compensation, the use of which to pay dues is discretionary and personal to the pilots.

As set out in 46 CFR 404.5(a)(6), medical, pension, and other benefits paid to pilots, or for the benefit of pilots, are treated as pilot compensation. Because union dues are ''other benefits,'' they have been consistently treated as such and have, therefore, been properly classified as compensation. No provision for the payment of union dues by employers is provided for in the current AMO union contract. The allowability of the lobbying expense portion of the dues is therefore not an issue.

In this computation, pilotage dues of $26,210 and $6,600 from District Three; $15,840 from District Two; and $13,970 from District One were all removed from the expense base and reclassified as pilot compensation.

Investment Base

Issue: One comment said the target return on investment should be increased from 0.0704 to a ''realistic'' number, which is probably more than double this figure.

Another comment stated that, ''in the rate methodology, we find it difficult to accept that investment in assets necessary to provide pilotage services is recognized only at a rate of return on investment equivalent to high quality bonds. High quality bonds are a safe, passive investment requiring no management or risk. That is not the case in the pilotage environment in the Great Lakes or in any other area.''

A third comment said, ''we believe a fair return on pilot assets would be a minimum of 15 percent to recognize lost opportunity costs from alternative available investments for their financial assets.''

One comment stated that wrong numbers were used for the investment base's return on investment for one of the Districts. The comment also stated the return on investment should be more than double the 0.0704 used in the interim rule.

Response: In calculating the investment base for 2002, we are required to use the Investment Base Formula in Appendix B to 46 CFR part 404. We must calcualate the investment base to project each association return on investment pursuant to 46 CFR part 404, Appendix A, Step 4. Under step 5(2) of Appendix A, it states that, ''the allowed Return on Investment (ROI) is based on the preceding year's average annual rate of return for new issues of high grade corporate securities.'' We have used Moody's AAA bond rate for this purpose since the methodology was adopted in 1995. Moody's Corporation is a publicly traded company (NYSE:MCO) that provides financial services, including credit ratings, research, and risk analysis.

The investment base reported by each District for 2002, and reviewed by the independent accountant, was incorporated into the independent accountant's report for each District without adjustment. These amounts were used for the projection of return on investment and in the calculation of this rate.

Inflation Rate

Issue: One comment stated the inflation rate for the full-rate adjustment should be increased to five or six percent instead of the two percent found in the interim rule.

Response: Appendix A to 46 CFR part 404, Step 1.C., ''Adjustment for Inflation or Deflation,'' requires an inflation adjustment for which we used the preceding year's change in the U.S. Department of Labor, Bureau of Labor Statistics, ''Midwest Economy—Consumer Prices.'' This is a separate adjustment to expenses and is in addition to inflation adjustments to the union contract. The ''Midwest Economy—Consumer Prices'' index of the North Central Region has been traditionally used as part of the ratemaking methodology and it most accurately reflects economic changes over time in the Great Lakes region. When, as here, several years elapse between rate adjustments, the inflation rate will be compounded, that is, the adjustments become cumulative. In this ratemaking, we are using an inflation adjustment of 1.9 percent for each of the years 2003 and 2004 to properly account for inflation from the date of the last full ratemaking in 2001.

401(k) Plans

Issue: Three comments discussed whether 2001 contributions to employee 401(k) plans were calculated correctly and how much an employer is allowed to contribute to those 401(k) plans. Of those, one comment said employer contributions to those 401(k) plans had been improperly calculated—that it should be based on a first mate's daily pay. Another comment stated that the Coast Guard had correctly calculated the employer portion by using a first mate's total pay, instead of just their daily pay. Another comment said that all three Districts should be allowed to add expenses for contributions, not just two of them (Districts Two and Three).

Response: As of August 1, 2001, the AMO union contracts required employers to match employee contributions to a 401(k) plan in an amount equal to 42 percent of the employee contribution up to 4.2 percent of the employee's compensation. Effective August 1, 2002, the matching amount was increased to 50 percent not to exceed 5 percent of employee compensation.

In direct response to the three comments, the Coast Guard, consistent with prior years' calculations, has used the AMO union contracts for the purposes of computing employer contributions to 401(k) plans, we have consistently used the AMO union contracts' definition of ''compensation'' of a contributing employee—''the pilots' wages for time worked, not including benefits.'' We have included in total pilot compensation an amount for the first four months equal to 42 percent of the pilot's contribution up to 4.2 percent of a contributing pilot's base wages and for the next five months, a 50 percent employer match up to 5 percent of a contributing pilot's base wages. This amount is included as a benefit in total pilot compensation.

Number of Pilots Needed

Issue: A number of comments criticized the Coast Guard's determination of the number of pilots needed to provide pilotage services for the projected volume of vessel traffic. One comment said that the result of not rounding up the number of pilots needed in each area separately will be to under-staff each area and delay the ships.

Response: In the interim rule, we divided the individual bridge-hour target per pilot (1,000 or 1,800 hours required by 46 CFR part 404, Appendix A, Step 2B (1) and (2)) into projected bridge hours in each area to determine the ''number of pilots needed'' in each area. That number is almost never a whole number in any calculation. In the partial-rate calculation, we did not round up to the ''next whole number'' because to do so would inaccurately inflate the resulting target pilot compensation and revenues needed. This number is merely one step in the calculation of the rate. It should not be confused with the actual number of pilots employed in each area to provide necessary pilotage services.

In this full-rate calculation, again for precision and accuracy in computation, we calculated the ''number of pilots needed'' in each area to the nearest tenth. We did not round up or down to the nearest whole number. As we stated in the interim rule, it is up to each Association to determine how many pilots to employ to meet the actual shipping demand.

Delay and Detention

Issue: A number of comments stated that the Coast Guard needs to include detention, delay, and travel time in the calculation of bridge hours.

One comment stated American Great Lakes pilots have always counted delay, detention, movages, and cancellations (DDMC) when calculating bridge hours. Canadian pilots count DDMC as bridge time. Pilots throughout the United States count DDMC as bridge time. Delay and detention figures have always been included in past rate adjustments.

Other comments said the Coast Guard has excluded delay and detention from projected bridge hours. One comment stated ''prior to the 2000 rate, detention and delay was always included in projected bridge hours, and the exclusion of detention and delay from projected bridge hours was strictly the erroneous interpretation of the previous Director of Great Lakes Pilotage.''

Response: The Coast Guard disagrees that it has improperly calculated bridge hours. In this ratemaking, bridge hours are determined based upon the same definition that has appeared in the regulations since 1995, when the ratemaking methodology was published. 60 FR 18366, April 11, 1995. That definition appears at Appendix A to 46 CFR part 404 in (Step 2.B.(1)), ''Determination of Number of Pilots Needed,'' and states that ''Bridge hours are the number of hours a pilot is aboard a vessel providing basic pilotage service.'' The Coast Guard continues to interpret this language to mean actually providing pilotage service and not to include delay, detention, and travel time. The Coast Guard's interpretation of bridge hours will be reviewed in light of the ''Bridge Hour Study'' conducted by RADM Riker USCG Ret. That review may result in a separate rulemaking to revise the ratemaking analyses and methodology.

Target Pilot Compensation

The 54-Day Multiplier

Issue: There were numerous comments to the interim rule that opposed the use of 44 days as the multiplier when calculating target pilot compensation. One comment expressed concern that the use of the 44-day multiplier in the interim rule was a proposed change that would be carried forward into future rulemaking. Another comment objected to the multiplier being reduced from 54 to 44 days on the basis of pilots having scheduled time off during the season, with no corresponding decrease in bridge hours during the navigation season.

Still another comment stated the Coast Guard must re-think its calculation of target compensation and reinstate the 54-day basis for target compensation to reflect the fact that revenue generation is based on the average annual compensation of first mates and masters of lake ships. One comment stated it was a ''profound'' error to change the multiplier from 54 days to 44 days because it reduced the calculation of target pilot compensation by 15.27 percent in undesignated waters and 16.16 percent in designated waters with no corresponding reduction in the work standard (1,800 and 1,000 hours, respectively).

Response: In the 2003 interim rule, the Coast Guard used a 44-day multiplier to calculate the partial-rate adjustment. The use of the 44-day multiplier was a one-time use of that number solely for the purposes of the partial-rate calculation. The interim rule did not propose a permanent change to the multiplier. The reason we used the 44 days was because of comments on the NPRM suggesting a reduction in the multiplier from 54 to 44 or 45 days, to take into consideration vacation time actually taken by the pilots.

As stated in the interim rule, the Coast Guard used 44 days as the multiplier while it reviewed the multiplier issue and made a final determination on the appropriate multiplier to use in the full-rate calculation. The use of 44 days in the interim rule was not a change to the methodology, but rather the highest number we were certain of before we completed the review of this issue. We have completed that review. We have concluded that 54 days is the correct multiplier, and have used that number in this full-rate calculation.

This is consistent with the current AMO union contract under which a first mate who works a full month will receive wages, exclusive of benefits, equivalent to 54 times the daily wage rate.

We have historically used the 54-day multiplier used by AMO in their contracts. Under the AMO contracts, this 54-day multiplier is broken down as follows:

Average Working Days per Month ...	30.5
Vacation Days per month	15.0
Weekend Days per month	4.0
Holidays per month	1.5
Bonus per month	3.0
	54.0
Basic Calculation	*

*54.0 × Daily Rate = Monthly Wage Rate.

The purpose of the Coast Guard's ratemaking methodology is to ensure that a pilot working 1,800 hours on undesignated waters receives the average annual compensation for first mates on U.S. Great Lakes vessels based on the most current AMO union contracts and that a pilot working 1,000 hours on designated waters receives the average annual compensation of masters on U.S. Great Lakes vessels. We believe that use of the 54-day multiplier to calculate wages in conjunction with our historic methodology of calculating benefits best meets this purpose.

Discussion of the Rule

Ratemaking Process and Methodology

This section is a description of the analyses performed, and the seven-step methodology followed, in the development of the full-rate adjustment. The first part summarizes the full-rate changes in this interim rule. The second part describes the ratemaking process and explains the formulas used in the methodology to show how the full-rate adjustment was actually calculated.

The authority to establish pilotage rates on the Great Lakes derives from 46

U.S.C. 9303(f), which states, in pertinent part, that: ''[t]he Secretary shall prescribe by regulation rates and charges for pilotage services, giving consideration to the public interest and the costs of providing the services.''

The pilotage regulations require that pilotage rates be reviewed annually in accordance with procedures detailed in Appendix C to 46 CFR part 404. The Coast Guard reviews Association financial reports annually and, at a minimum, the Coast Guard completes a thorough review of pilot association expenses, and establishes pilotage rates in accordance with the procedures detailed in § 404.10 and Appendix A of this part at least once every five years. If the annual review shows that pilotage rates are within a reasonable range of their target, no adjustment to the rates will be initiated. However, if the annual review indicates that an adjustment is necessary, or if it is the fifth anniversary of the last full ratemaking, then the Coast Guard will establish new pilotage rates using § 404.10 and Appendix A of this part.

The Coast Guard compares projected rates of return on investment to target rates of return on investment for each pilotage area to determine whether an adjustment to the pilotage rates is necessary. If the projected rates of return on investment are lower than the target rates of return on investment, the revenues generated by the current pilotage rates would be insufficient for the pilots to earn target pilot compensation. As the following analysis shows, the difference between the projected rates of return on investment and the target rates of return on investment, makes an increase appropriate in this case. Therefore, the Coast Guard used the methodology contained in Appendix A to develop a new rate. The purpose of the ratemaking analyses and methodology contained in Appendix A is to arrive at a rate multiplier that will make the projected rates of return on investment equal to the target rates of return on investment in each pilotage Area. Once this is accomplished, the Coast Guard calculates a rate multiplier, that when applied to the current rates will increase or decrease those rates, generating sufficient revenue to permit the pilots to earn target compensation.

To arrive at the rate multiplier, the Coast Guard first projects target pilot compensation, revenue, and reasonable and necessary pilot expenses. In a separate calculation, the Coast Guard then calculates the investment base for each District to determine the target rate of return on investment. Taking into consideration revenues, expenses, and returns on investment, the Coast Guard then calculates the projected rates of return on investment. The Coast Guard then compares the projected rates of return on investment to the target rates of return on investment. If there is a difference between the projected rates of return on investment and target rates of return on investment, a rate adjustment may be appropriate. Finally, to arrive at the appropriate rate multiplier, the revenue needed is divided into projected revenue. A rate multiplier is calculated individually for each Area. The new rates are arrived at by multiplying the rate in each Area by the applicable rate multiplier.

Part 1: Pilotage Rate Charges—Summarized

The pilotage rates for Federal pilots on the Great Lakes contained in 46 CFR 401.405, 401.407, and 401.410 have been adjusted in accordance with the methodology appearing at 46 CFR part 404. The full-rate adjustment results in an average increase of 20 percent across all Districts over the partial-rate adjustment.

2004 AREA RATE CHANGES

[In percent]

If pilotage service is required in:	Then the rate represents a change over the current rate of:
Area 1 (Designated waters)	20
Area 2 (Undesignated waters)	16
Area 4 (Undesignated waters)	26
Area 5 (Designated waters)	29
Area 6 (Undesignated waters)	16
Area 7 (Designated waters)	16
Area 8 (Undesignated waters)	13

Rates for ''Cancellation, delay or interruption in rendering services (§ 401.420)'' and ''Basic rates and charges for carrying a U.S. pilot beyond [the] normal change point, or for boarding at other than the normal boarding point (§ 401.428)'' are increased by 20 percent. These charges are the same in every Area.

Part 2: Calculating the Rate Multiplier

The ratemaking analyses and methodology contained in Appendix A to part 404 is comprised of seven steps. These steps are:

(1) Projection of Operating Expenses;

(2) Projection of Target Pilot Compensation;

(3) Projection of Revenue;

(4) Calculation of Investment Base;

(5) Determination of Target Rate of Return on Investment;

(6) Adjustment Determination (Revenue Needed); and

(7) Adjustment of Pilotage Rates.

The data used to calculate each of the seven steps comes from the 2002 independent accountant's reports for each District. The Coast Guard also used the most recent union contracts between the AMO and vessel owners and operators on the Great Lakes to determine target pilot compensation. All documents and records used in this full-rate calculation have been placed in the public docket for this rulemaking and are available for review at the addresses under **ADDRESSES.**

The Coast Guard uses the Appendix A analyses and methodology to develop a rate multiplier to adjust pilotage rates in each pilotage Area. The following is an explanation of each step of the analyses and methodology and how the rate multiplier is calculated.

Some values may not total due to format rounding for presentation in charts and explanations in this section. The rounding does not effect the integrity or truncate the real value of all calculations in the ratemaking methodology described below.

Step 1: Projection of Operating Expenses

The Coast Guard projects the amount of vessel traffic annually. Based on that projection, the Coast Guard forecasts the amount of fair and reasonable operating expenses that pilotage rates should recover.

To project operating expenses, the Coast Guard obtains financial data from each Association. Included in the financial data is a detailed listing of all the Association's operating expenses. Based on recommendations of an independent accountant, the Coast Guard determines the expenses to be used in projecting future expenses. Once these expenses are identified and totaled, the Coast Guard makes an adjustment to the total for inflation or deflation. The Coast Guard then uses the projected annual vessel traffic to project the amount of expenses that the rates should recover.

The steps that follow explain how this is performed:

- Submission of financial information from each Association;
- Determination of recognizable expenses;
- Adjustment for inflation or deflation; and
- Final projection of operating expenses.

Submission of Financial Information

(1) Each district Association must provide the Coast Guard with detailed annual financial statements in accordance with 46 CFR 404.300.

This information is reviewed by a Coast Guard-contracted independent accounting firm. With this information, the independent accounting firm visits the offices of each Association and performs a detailed review of all accounts over $75 to confirm the accuracy of the financial statements provided by each Association. Using the financial statements from the Associations and the information obtained during the independent accounting firm's review of each Association's records and accounts, the independent accountant compiles this information into financial reports for each District.

(2) This interim rule uses the 2002 independent accountant?s reports for each District for the period ending December 31, 2002. These reports may be found in the docket.

Determination of Recognized Expenses

(1) The Coast Guard determines which Association expenses will be recognized for ratemaking purposes, using the guidelines for the recognition of expenses contained in § 404.5. Each Association is responsible for making available to the Coast Guard documentation to support the expense figures.

(2) Expense items which the Coast Guard determines to be necessary and reasonable for the provision of pilotage service are recognized for ratemaking purposes.

(3) The following is a summary of the adjustments to expense items adopted from the 2002 independent accountant?s reports ending on December 31, 2002.

	District one	District two	District three
SUMMARY OF EXPENSE ADJUSTMENTS			
1. Reported Expenses for 2002	$658,913	$1,295,595	$1,242,847
2. Expense Adjustments			
Social Security and Medicare Expenses	69,025	.....	136,390
Reimbursed Expenses:			
Dispatch Service/Parking Fees	.....	(76,671)	.....
Pilot Boat Revenue	.....	(290,508)	.....
Canadian Pilot Revenue	.....	.....	(161,680)
Uncollected Pilotage Fees/Bad Debt Expense	.....	.....	14,190
Not Recognized Expenses:			
Lobbying Expenses	(21,000)	.....	(9,000)
Promotional Expenses	.....	(882)	.....
Promotional/Charitable Expenses	.....	.....	(471)
Reclassified Expenses:			
As additional pilot compensation:			
Training Expenses (Paid to members for the training of unregistered pilots)	(2,500)	.....	.....
American Pilots Association (APA) dues	(13,970)	(15,840)	.....
Contract Pilotage Fees as operating expense	(118,919)	.....	.....
Meeting attendance	.....	(9,300)	(26,210)
APA/Masters, Mates, & Pilots dues	.....	.....	(6,600)
As operating expenses:			
Insurance Fees	23,578	.....	.....
Unreimbursed Travel Costs	12,076	.....	.....
Pilot travel expense (Reclassified as operating expense from pilots' compensation)	10,500	.....	146,907
Undocumented Expenses:			
Subsistence (Daily meals/incidental expense per diem)	.....	(17,180)	.....
3. Total Adjustments	(41,210)	(410,381)	93,526
Total Adjusted Expenses for 2002	617,703	885,214	1,336,373
SUMMARY OF PROJECTION OF OPERATING EXPENSES			
1. Reported Expenses for 2002	658,913	1,295,595	1,242,847
Total Adjustments	(41,210)	(410,381)	93,526
Total Adjusted Expenses for 2002	617,703	885,214	1,336,373
2. Inflation Adjustments			
(2003)—1.9%	11,736	16,819	25,391
(2004)—1.9%	11,959	17,139	25,874
3. 2002 Adjustments for Foreseeable Circumstances	0	0	0
Expenses projections of $8,086 are for travel and FICA expenses associated with additional bridge hours projected for Area 2	8,086	.....	.....
4. Total Expenses for 2002 Pilotage. Expenses Projected for 2004	649,485	919,172	1,387,638

Each expense adjustment adopted by the Coast Guard on the independent accountant's recommendation is detailed and explained below, and in the notes to the 2002 independent accountant's reports for each District.

Adjustments made to reported expenses are divided into five categories:

(1) Social Security and Medicare Expenses;
(2) Reimbursed Expenses;
(3) Not Recognized Expenses;
(4) Reclassified Expenses; and
(5) Undocumented Expenses.

Social Security and Medicare Expenses

The Coast Guard must ensure that each Association's expenses are analyzed fairly and consistently with the other Associations. The Associations of Districts One and Three are organized as partnerships, while the Association of District Two is organized as a corporation. Because of this difference, the District Two Association pays the employer's share of Social Security and Medicare taxes out of corporate funds. In the Associations of Districts One and Three, the individual pilots pay these expenses because each pilot is self-employed. The Coast Guard adopted the recommendation of the independent accountant and amounts for these expenses have been added to District One and Three's expense bases. In District One, $69,025 in Social Security and Medicare taxes have been added to the expense base. In District Three, $136,390 in Social Security and Medicare taxes have been added to the expense base.

Reimbursed Expenses

The independent accountant found that a number of expenses have been erroneously reimbursed to the Associations and recommended that these expenses should not be included in each District's expense base. Examples are reimbursement from one pilots' Association to another for shared pilot boats and dispatch and reimbursement from Canadian pilots for shared administrative expenses, dispatch, and pilot boat services.

The Coast Guard adopted the independent accountant's recommendation to deduct these reimbursed expenses from the Districts' expense bases. These expenses are paid for by other Districts or parties, not by the Associations claiming them, and, as such, should not be included in the expense base of the District being reimbursed. In District Two, we deducted a total of $367,179 from the expense base—$290,508 from pilot boat revenue, of which $129,162 was for pilot boat surcharges from shippers, and $76,671 for dispatch service and parking fees. Likewise, in District Three, we deducted $161,680 in reimbursed expenses for pilotage and in dispatch services from the expense base. There were no reimbursed expenses in the District One expense base.

In District Three, we adjusted 2002 operating expenses because the pilot Association was unable to collect pilotage fees from one ship in 2001. The Association included this $14,190 expense under the title ''provision for doubtful accounts'' in the Association's 2001 financial statements. These funds were later recovered in 2002 and included as a reduction in operating expenses on the Association's financial statements. In the independent accountant's 2001 report on the Association, this expense was excluded from the ratemaking expense base. This 2002 recovery has been similarly excluded as an adjustment to the expense base. Generally accepted accounting principles would classify this recovery as ''other income'' not as a reduction of expenses.

Not Recognized Expenses

Lobbying expenses and certain miscellaneous expenses such as advertising, business promotion, and donations were identified as unnecessary for the provision of pilotage services.

The Coast Guard adopted the independent accountant's recommendation to deduct $21,000 in lobbying fees from District One's expense base and $9,000 from District Three's expense base. District Two reported no lobbying expenses in 2002. Lobbying expenses are specifically excluded by regulation—46 CFR 404.5(a)(8)(ii). An expense item for business promotion in District Two of $882 was also deducted. Lastly, we deducted $471 for charitable donations from District Three's expense base. The Coast Guard adopted the independent accountant's recommendation to deduct these expenses because none were necessary for the provision of pilotage services.

Reclassified Expenses

The independent accountant recommended deductions of $13,970 (dues payments), $2,500 (training expenses) and $118,919 (contract pilotage service) from District One; $9,300 (meeting expense) and $15,840 (association dues) from District Two; and $26,210 (dues and subscriptions) and $6,600 (union dues) from District Three because these payments were erroneously classified as expenses. These expenses were reclassified as pilot compensation for ratemaking purposes.

The $9,300 paid to pilots in District Two for attending yearly meetings was in addition to those payments pilots received for travel and per diem. Section 404.5 states that in determining reasonableness, such an expense item is measured against one of three criteria: (1) Comparable or similar expenses paid by others in the maritime industry, (2) comparable or similar expenses paid by other industries, and (3) U.S. Internal Revenue Service Guidelines. 46 CFR 404.5(a)(2). In this case, the appropriate criteria are provided by U.S. Internal Revenue Service guidelines. As set out in IRS Regulation 1.62–2(c)(5), travel costs that are not made under an ''accountable plan,'' one in which regular reporting of expenses by employees is required, are fully taxable to the employee and subject to Social Security and income tax withholding. Therefore, the Coast Guard reclassified these payments as pilot compensation, not expense reimbursements.

The remaining expenses, which are detailed below, are subject to 46 CFR 404.5(a)(6) which states that medical, pension, and other benefits paid to pilots, or for the benefit of pilots by the Association, are treated as pilot compensation.

District One paid $2,500 to registered pilots to train temporarily registered pilots on Lake Ontario and $118,919 to an independent registered pilot for the provision of pilotage services.

Deductions were also made for union dues in District One of $13,970, Association dues of $15,840 in District Two, and subscriptions and union dues of $6,600 and $26,210 in District Three. No provision for the payment of union dues, by employers, is provided for in the 2003 AMO union contract.

The independent accountant made several recommendations to reclassify certain sums of money as expenses for inclusion in the expense bases of the Associations in Districts One and Three. In District One, the independent accountant recommended that $23,578 paid by the Association for insurance to cover pilotage operations be reclassified as an expense rather than a member's distribution, as was done by the Association, because the expense is necessary and reasonable for the provision of pilotage services and AMO members would not be required to pay this expense.

In addition, District One reported pilot travel expenses in the amount of $10,500 under pilots' compensation rather than as an operating expense.

Additional travel costs of $12,076 incurred by river pilots, but not reimbursed by the St. Lawrence Seaway Pilots Association, were examined by the independent accountant. These unreimbursed expenses were supported by an adequate contemporaneous log and reported on a per trip basis. Any amount over $75 was documented

according to existing Internal Revenue Code regulations for the substantiation of travel expenses. The Coast Guard adopted the independent accountant's recommendation that those amounts be reclassified as expenses.

In District Three, the Association reported $146,907 in pilot travel expenses under pilot compensation rather than as an operating expense. This amount has been reclassified as an operating expense. The pilots report their per diem expenses to the Association but do not get reimbursed for them as reported. Instead, the Association uses a schedule based on 200 travel days per pilot (per 187 days worked) and provides reimbursement in accordance with this schedule. Temporarily registered pilots are paid a per diem allowance and all pilots are reimbursed for actual hotel and temporary lodging expenses. No unallowable administrative travel costs were identified during the review.

Undocumented Expenses

The independent accountant's examination of District Two's financial statements noted payments of a $38 daily meals and incidental expense per diem based on days available, generally about 265 days per pilot. These per diem payments totaled $115,160. The Federal Travel Regulations (41 CFR part 301–11) do not contemplate a payment based on days available for travel. The IRS procedure in Rev. Proc. 2001.47 (2001) requires substantiation as to time, place, and purpose for expenses paid.

Internal Revenue Service regulations currently allow for ''reasonable business practice'' in reimbursement of per diem costs. Given that pilots are often at remote sites waiting for ships, allowable per diem expenses are based on approximately two days per diem for each passage or 200 days travel per pilot per 100 days worked. Recalculating the per diem expense shows that the allowable amount to be expensed is $97,980. The Coast Guard adopted the independent accountant's recommendation and the balance of $17,180 was reclassified as pilot compensation.

Foreseeable Circumstances

Finally, an additional expense projection of $8,086 was made for pilot travel and Social Security expenses and benefits associated with the addition of 766 additional bridge hours for pilots to cover the 50 percent of vessel traffic in Area 2 required under the Memorandum of Arrangements with Canada.

Adjustment for Inflation

In making projections of future expenses, expenses that are subject to inflationary or deflationary pressures are adjusted. Annual cost inflation or deflation will be projected to the succeeding navigation season, reflecting the increase or decrease in costs throughout the year. Upon the recommendation of the independent accountant, the Coast Guard adopted the adjustments for inflation for the years 2003 and 2004 based on the U.S. Department of Labor, Bureau of Labor Statistics, ''Midwest Economy—Consumer Price'' using the years 2002 to 2003 annual average in the amount of 1.9 percent per year.

Projection of Operating Expenses

Once all adjustments are made to the recognized operating expenses, the Coast Guard projects those expenses for each pilotage area. For the remainder of the 2004 and for the 2005 navigation seasons, the Coast Guard projects that operating expenses will remain the same as the 2002 navigation season. Operating expenses over the last several years have remained steady across all three Districts. The Coast Guard believes that there are no foreseeable circumstances that will cause the projection for the remainder of the 2004 and for the 2005 seasons to be so different from the 2002 navigation season to require an adjustment. General and administrative expenses are apportioned to each Area according to the number of pilots needed in that Area. For the remainder of the 2004 and for the 2005 navigation seasons, the projection of operating expenses are:

District one		Area 1 St. Lawrence River	Area 2 Lake Ontario	Total district one
Projection of operating expenses		$300,682	$348,803	$649,485
District two		Area 4 Lake Erie	Area 5 Southeast Shoal to Port Huron, MI	Total district two
Projection of operating expenses		$419,205	$499,967	$919,172
District three	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior	Total district three
Projection of operating expenses	$693,924	$269,645	$424,070	$1,387,639

Step 2: Projection of Target Pilot Compensation

(1) The second step in the ratemaking analyses and methodology is to project the amount of target pilot compensation that pilotage rates should provide in each Area. This step consists of the following:

a. Determination of the target rate of compensation;

b. Determination of the number of pilots needed in each pilotage area; and

c. Multiplication of target compensation by the number of pilots needed to project target pilot compensation needed in each Area. Each of these is detailed below.

Determination of Target Pilot Compensation

(1) Target pilot compensation for pilots providing services in undesignated waters approximates the average annual compensation for first mates on U.S. Great Lakes vessels. The average annual compensation for first mates is determined based on the most current AMO union contracts, and includes wages and benefits received by first mates.

(2) Target pilot compensation for pilots providing services in designated waters approximates the average annual compensation for masters on U.S. Great Lakes vessels. The Coast Guard has consistently calculated compensation for pilots on designated waters by multiplying first mates' salary portion of their compensation by 150 percent and adding benefits as required by 46 CFR part 404, Appendix A, Step 2.A(2).

(3) First mates' pay is calculated under the AMO union contracts on a daily wage rate basis and is then multiplied by the average days per

month, plus certain additional entitlements, yielding a monthly multiplier, as follows:

a. Average Working Days per Month	30.5
b. Vacation Days per month	15.0
c. Weekend Days per month	4.0
d. Holidays per month	1.5
e. Bonus per month	3.0
Monthly Multiplier	54.0

The monthly multiplier (54 days) is then multiplied by the daily rate for first mates ($220.35) under the 2003 AMO union contract, yielding the total monthly pay rate of $11,898.90, and a total annual pay rate, without benefits, of $107,090.10.

The Coast Guard has then consistently multiplied the monthly pay rate by nine months, the approximate length of the Great Lakes shipping season. For a first mate, this would be equivalent to working every day of those nine months. Several comments on this rulemaking stated that this is inappropriate because pilots do not work every day of the shipping season and this led to the suggestions to reduce the 54-day monthly multiplier.

After review of these comments, the Coast Guard decided to continue to use the 54-day monthly multiplier and the nine-month shipping season. The Coast Guard's goal in determining target pilot compensation is to approximate the compensation of first mates and masters on U.S. Great Lakes vessels. Over the course of the entire shipping season, however, pilots, first mates, and masters generally do not work the same number of days, making a comparison of actual or average days worked inappropriate since the goal is to achieve comparable annual compensation. Indeed, each first mate and master may work different numbers of days resulting in different overall actual compensation. Similarly, pilots working primarily in designated waters have to work fewer hours than pilots working primarily in undesignated waters for each to work a sufficient number of bridge hours to achieve their target compensation. Consequently, comparing days worked is not a useful measure to ensure that pilots receive annual compensation (wages) comparable to the annual compensation (wages) of a first mate or master working on U.S. Great Lakes vessels.

First mates and masters do not generally work every day of the shipping season. As a result, calculating target compensation by multiplying both the monthly wages and the monthly benefits by nine months—the equivalent compensation of a first mate or master working every day of the shipping season—would result in a target pilot compensation exceeding the annual compensation of first mates and masters on U.S. Great Lakes vessels. This would also be inappropriate.

In each of its prior ratemakings the Coast Guard has calculated benefits based on 180 days/6 months worked per navigation season and has calculated wages based on nine months worked per navigation season. This results in a blended total compensation figure between target compensation that would be too high (assuming pilots worked every day of the navigation season) and target compensation that would be too low (assuming pilots only worked 180 days in a navigation season). While comments suggested alternative methods of calculating pilot compensation, none of the comments provided sufficient supporting data to demonstrate that those alternatives better approximated the annual compensation of first mates and masters serving on U.S. Great Lakes vessels. The Coast Guard will therefore maintain its current method of calculating target compensation.

(4) The tables below summarize how total target pilot compensation is determined for undesignated and designated waters:

TABLE 1.—WAGES

Monthly component	(First mate) Pilots on undesignated waters	(Master) Pilots on designated waters
$220.35 (Daily Rate) × 54 (Days)	$11,899	N/A
Monthly Total × 9 Months = Total Wages	107,090	N/A
Wages: $220.35 (Daily Rate) × 54 × 1.5	N/A	$17,848
Monthly Total × 9 Months = Total Wages	N/A	160,635

TABLE 2.—BENEFITS

Monthly component	(First mate) Pilots on undesignated waters	(Master) Pilots on designated waters
Employer Contribution—401(k) Plan	$552.64	$828.96
Clerical	330.53	330.53
Health	2,064.79	2,064.79
Pension	1,283.10	1,283.10
Monthly Total Benefits	4,231.05	4,507.37
Monthly Total Benefits × 6	25,386	27,044
Total Wages Plus Benefits	132,476	187,679

Effective August 1, 2001, AMO union contracts provided ''that employers will make matching contributions for each participating 401(k) plan employee in an amount equal to 42 percent of the employee's contribution, to a maximum to 4.2 percent of a participating employee's compensation.'' Effective August 1, 2002, the matching benefit increased to 50 percent for each participating 401(k) employee up to a maximum of 5 percent of a participating employee's compensation. For purposes of this benefit, the AMO union contracts interpret ''employee compensation'' to mean base wages. District Two has a pension plan, while District Three has a 401(k) plan. District One does not provide either a 401(k) or pension plan for its members. Therefore, to conform to the AMO union contracts in

accounting for employer contributions of 42 percent during the first four months of the season and 50 percent for the last five months of the navigation season, pilot compensation for Districts Two and Three are increased. The increase in undesignated waters is $3,315.84 and for designated waters is $4,973.64 per pilot. These increases are 4.2 percent and 5 percent of compensation, respectively.

District One does not administer any form of 401(k) or retirement plan. As a consequence, in the NPRM, a decision was made not to permit the District One Association to benefit by obtaining the matching expense. At the recommendation of the independent accountant, the Coast Guard has determined that the District One Association pilots should receive the same employer matching benefits as Districts Two and Three.

This decision is analogous to the Social Security and Medicare equalization performed earlier to equalize benefits between District Two and Districts One and Three respecting corporate payment of Social Security and Medicare benefits that are not paid by Districts One and Three. Accordingly, the compensation base of District One is adjusted to include an amount equivalent to an employer's contribution under the AMO 401(k) matching plan, which increases pilot compensation in undesignated waters by $3,315.84 and for designated waters by $4,973.64, per pilot.

The calculation of 401(k) matching benefits for undesignated and designated waters appear in the tables below:

Employer contributions	
UNDESIGNATED WATERS	
42%	$11,898.90 × .042 × 4 ÷ 9 = $222.11
50%	$11,898.90 × .050 × 5 ÷ 9 = $330.53
	$222.11 + 330.53 = $552.64
Pilot Compensation for 401(k)plan	$552.64 × 6 = $3,315.84
DESIGNATED WATERS	
42%	$17,848 × .042 × 4 ÷ 9 = $333.16
50%	$17,848 × .050 × 5 ÷ 9 = $495.78
	$333.16 + 495.78 = $828.94
Pilot Compensation for 401(k) plan	$828.94 × 6 = $4,973.64

Determination of Number of Pilots Needed

(1) The number of pilots needed in each Area of designated waters is established by dividing the projected bridge hours for that Area by 1,000. Bridge hours are the number of hours a pilot is aboard a vessel providing pilotage service.

(2) The number of pilots needed in each Area of undesignated waters is established by dividing the projected bridge hours for that Area by 1,800.

(3) The 1,000 hours in paragraph (1) and 1,800 hours in paragraph (2) are the target number of bridge hours a pilot needs to earn target pilot compensation.

(4) The Coast Guard used the results in calculating target pilot compensation and paragraphs (1) through (3) in ''Determination of Number of Pilots Needed'' to calculate the proper number of pilots needed for each pilotage Area. Although we had originally included a projection for the fast-ferry between Rochester, NY, and Toronto, Canada, on Lake Ontario, the ferry is not operating. Therefore, this rule does not contain any adjustments for fast-ferry pilotage needs in Area 2. However, the Coast Guard made adjustments to the number of pilots needed for Area 2 to ensure sufficient pilots to provide 50 percent of the pilotage service projected in that Area. The Memorandum of Arrangements Great Lakes Pilotage Between the Secretary of Transportation of the United States of America and the Minister of Transport of Canada (Dated January 18, 1977, Washington, DC, and January 18, 1977, Ottawa, Canada,) hereafter Memorandum of Arrangements, requires that we share traffic equally in Area 2 with the Canadian pilots requiring 766 additional bridge hours. In 2002, Area 2 reported bridge hours totaling 5,951 or 44.3 percent of pilotage service provided by U.S. pilots. Because, the MOA with Canada requires that pilotage service for Area 2 be equally divided between the United States and Canada, we increased the percentage of pilotage service in our projection from 44.3 percent to 50 percent. By increasing pilot service hours from 44.3 percent to 50 percent, we increased the bridge hour levels from 5,951 to the projected 6,717. This change results in an increase of 766 hours.

(5) Projected bridge hours are based on the vessel traffic that pilots are expected to serve. The Coast Guard projects, with the exception of Area 2 as discussed above, that bridge hours for the remainder of the 2004 and for the 2005 navigation season will be comparable to that of 2002. Dividing the projected annual number of bridge hours per area by the target number of bridge hours per pilot results in the number of pilots that will be needed in each Area to service vessel traffic.

(6) The following table shows the calculation of the number of pilots needed in each Area for the remainder of the 2004 and for the 2005 navigation season:

Pilotage area	Projected 2003 bridge hours	Divided by bridge-hour target	Pilots needed [1]
Area 1	5,010	1,000	5.0
Area 2	6,717	1,800	3.7
Area 4	8,139	1,800	4.5
Area 5	6,395	1,000	6.4
Area 6	18,000	1,800	10.0
Area 7	3,863	1,000	3.9

Pilotage area	Projected 2003 bridge hours	Divided by bridge-hour target	Pilots needed [1]
Area 8	11,390	1,800	6.3

[1]The results of calculation of pilots needed has been rounded to one place to the right of the decimal. For example, in Area 1, 5,010 projected hours divided by 1,000 target hours is actually 5.01 pilots needed.

Projection of Target Pilot Compensation

(1) The projection of target pilot compensation is determined separately for each pilotage Area by multiplying the number of pilots needed in each Area by the target pilot compensation for pilots working in that Area.

(2) The results for each pilotage Area are set out below:

District one	Area 1 St. Lawrence River	Area 2 Lake Ontario	Total district one
Projection of target pilot compensation	$940,274	$494,358	$1,434,632
District two	Area 4 Lake Erie	Area 5 Southeast Shoal to Port Huron, MI	Total district two
Projection of target pilot compensation	$599,014	$1,200,210	$1,799,224

District three	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior	Total district three
Projection of target pilot compensation	$1,324,764	$725,005	$838,281	$2,888,051

Step 3: Projection of Revenue

(1) The third step in the ratemaking analyses and methodology is to project the revenue that would be received in each pilotage Area if existing rates were left unchanged. This calculation uses both the projection of vessel traffic for 2004 and for 2005 and current pilotage rates.

Projection of Revenue

(1) The Coast Guard projects the pilotage service that will be required by vessel traffic in each pilotage area. These projections are based on a review of 2001 and 2002 data. In this case, the Coast Guard projected that vessel traffic for the remainder of the 2004 and for the 2005 navigation seasons would remain the same as traffic during 2002. Traffic will remain the same, but the percentage of traffic serviced by Area 2 will increase as previously discussed. This projected demand was multiplied by the rates contained in the 2004 partial-rate adjustment to arrive at projected revenue.

(2) The results of the projection of revenue for each District are summarized below:

District one	Area 1 St. Lawrence River	Area 2 [1] Lake Ontario	Total district one
Projection of revenue	$1,041,032	$735,224	$1,776,256
District two	Area 4 Lake Erie	Area 5 Southeast Shoal to Port Huron, MI	Total district two
Projection of revenue	$824,888	$1,337,241	$2,162,129

District three	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior	Total district three
Projection of Revenue	$1,760,947	$864,911	$1,131,740	$3,757,599

[1]This figure includes an adjustment for increased traffic due to servicing a larger percentage of ships to satisfy our obligations under the MOA with Canada.

Step 4: Calculation of Investment Base

(1) The fourth step in the ratemaking analyses and methodology is the calculation of the investment base of each Association. The investment base is the recognized capital investment in the assets employed by each Association required to support pilotage operations. In general, it is the sum of available cash and the net value of real assets, less the value of land. The investment base has been established through the use of the balance sheet accounts, as amended by material supplied in the notes to the independent accountant's financial statements, which are in the public docket.

(2) The formula for determining the investment base appears at Appendix B to part 404. The calculation appears in the independent accountant's reports for each district. The investment base is equal to the recognized assets multiplied by the ratio of recognized sources of funds to total sources of funds. The investment base as calculated for each District is displayed below:

District one		Area 1 St. Lawrence River	Area 2 Lake Ontario	Total district one
Calculation of investment base		$142,622	$179,637	$322,259
District two		**Area 4 Lake Erie**	**Area 5 Southeast Shoal to Port Huron, MI**	**Total district two**
Calculation of investment base		$358,974	$428,132	$787,106
District three	**Area 6 Lakes Huron and Michigan**	**Area 7 St. Mary's River**	**Area 8 Lake Superior**	**Total district three**
Calculation of investment base	$445,915	$172,274	$272,507	$890,696

Step 5: Determination of Target Rate of Return on Investment

(1) The fifth step in the ratemaking analyses and methodology is to determine the target rate of return on investment. For each Association, a market-equivalent return on investment is allowed for the recognized net capital invested in the Association by its members.

(2) The allowed return on investment is equal to the preceding year's average annual rate of return for new issues of high-grade corporate securities.

(3) Assets subject to return on investment provisions must be reasonable in both purpose and amount. If an asset or other investment is not necessary for the provision of pilotage services, that portion of the return element is not allowed for ratemaking purposes.

(4) The target rate of return on investment for 2002 was 5.67 percent. This figure is the preceding year's (2001's) average annual rate of return on new issues of high-grade corporate securities in Moody's AAA rating, average return.

Step 6: Adjustment Determination

Projected Rate of Return on Investment

(1) The next step in the ratemaking analyses and methodology is to insert the results from steps 1, 2, 3, and 4 into a formula and to compare the results to step 5. This step considers revenues, expenses, and rates of return on investment, as set out below:

ADJUSTMENT DETERMINATION

[Projected rate of return on investment]

Line	Ratemaking projections for basic pilotage
1	+ Revenue (from Step 3).
2	− Operating Expenses (from Step 1).
3	− Pilot Compensation (from Step 2).
4	= Operating Profit/(Loss).
5	− Interest Expense (from financial reports).
6	= Earnings Before Tax.
7	− Federal Tax Allowance.
8	= Net Income.
9	Return Element (Net Income + Interest).
10	÷ Investment Base (from Step 4).
11	= Projected Rate of Return on Investment.

DISTRICT ONE—PROJECTED RATE OF RETURN ON INVESTMENT

Line	Area 1	Area 2	Total district one
1	$1,041,032	$735,224	$1,776,256
2	300,682	348,803	649,485
3	940,274	494,358	1,434,632
4	(199,924)	(107,937)	(307,861)
5	0	0	0
6	(199,924)	(107,937)	(307,861)
7	0	0	0
8	(199,924)	(107,937)	(307,861)
9	(199,924)	(107,937)	(307,861)
10	142,622	179,637	322,259
11	(1.402)	(0.601)	(1.001)

DISTRICT TWO—PROJECTED RATE OF RETURN ON INVESTMENT

Line	Area 4	Area 5	Total district 2
1	$824,888	$1,337,241	$2,162,129
2	419,205	499,967	919,172
3	599,014	1,200,210	1,797,224
4	(193,331)	(362,936)	(554,267)
5	9,028	9,028	18,056
6	(202,359)	(371,964)	(572,323)
7	4,282	4,282	8,564
8	(206,641)	(376,246)	(580,887)
9	(197,613)	(367,218)	(562,831)
10	358,974	428,132	787,106

DISTRICT TWO—PROJECTED RATE OF RETURN ON INVESTMENT—Continued

Line	Area 4	Area 5	Total district 2
11	(0.550)	(0.858)	(0.704)

DISTRICT THREE—PROJECTED RATE OF RETURN ON INVESTMENT

Line	Area 6	Area 7	Area 8	Total district
1	$1,760,947	$864,911	$1,131,740	$3,757,598
2	693,924	269,645	424,070	1,387,639
3	1,324,764	725,005	838,281	2,888,050
4	(257,741)	(129,739)	(130,611)	(518,091)
5	1,235	1,235	1,235	3,705
6	(258,976)	(130,974)	(131,846)	(514,386)
7	0	0	0	0
8	(258,976)	(130,974)	(131,846)	(514,386)
9	(257,741)	(129,739)	(130,611)	(510,681)
10	445,915	172,274	272,507	891,696
11	(0.578)	(0.753)	(0.479)	(0.603)

(2) The Coast Guard compares projected rates of return on investment, from Step 6, to target rates of return on investment, from Step 5, to determine whether an adjustment to the pilotage rates is appropriate. If the projected rates of return on investment are different from the target rates of return on investment, the revenues that would be generated by the current pilotage rates will not equal the revenues needed to reach target pilot compensation.

(3) The differences between the projected rates of return on investment and the target rates of return on investment in the table below demonstrate that a rate adjustment is appropriate.

TABLE D.—COMPARISON OF PROJECTED RATE OF RETURNS ON INVESTMENT AND TARGET RATE OF RETURN ON INVESTMENT

	Projected return on investment	Target return on investment	Difference in return on investment
District One	(1.001)	.0567	(0.945)
District Two	(0.704)	.0567	(0.647)
District Three	(0.603)	.0567	(0.547)

(4) The Coast Guard projects the revenues needed to make the projected rates of return on investment equal to the target rates of return on investment.

Revenue Needed Adjustment Determination

The formula used to calculate the revenue needed adjustment determination is similar to the formula used in determining the projected rates of return on investment.

REVENUE NEEDED ADJUSTMENT DETERMINATION

Line	Ratemaking projections for basic pilotage
1	+ Revenue (Revenue Needed).
2	− Operating Expenses (from Step 1).
3	− Pilot Compensation (from Step 2).
4	= Operating Profit/(Loss).
5	− Interest Expense (from financial reports).
6	= Earnings Before Tax.
7	− Federal Tax Allowance.
8	= Net Income.
9	= Return Element (Net Income + Interest).
10	÷ Investment Base (from Step 4).

REVENUE NEEDED ADJUSTMENT DETERMINATION—Continued

Line	Ratemaking projections for basic pilotage
11	= Revenue Needed Adjustment Rate.

To find the proper adjustment determination, projected revenue, as determined in Step 3, is adjusted in each Area until the formula used in determining the projected rates of return on investment yields projected rates of return on investment equal to the target rates of return on investment from Step 5. The following tables show the results of these calculations:

DISTRICT ONE—ADJUSTMENT DETERMINATION

Line	Area 1	Area 2	Total district one
1	$1,249,042	$853,346	$2,102,389
2	300,682	348,803	649,485
3	940,274	494,358	1,452,903
4	8,087	10,185	18,272
5	0	0	0

DISTRICT ONE—ADJUSTMENT DETERMINATION—Continued

Line	Area 1	Area 2	Total district one
6	8,087	10,185	18,272
7	0	0	0
8	8,087	10,185	18,272
9	8,087	10,185	18,272
10	142,622	179,637	322,259
11	.0567	.0567	.0567

DISTRICT TWO—ADJUSTMENT DETERMINATION

Line	Area 4	Area 5	Total district 2
1	$1,042,855	$1,728,734	$2,771,589
2	419,205	499,967	919,172
3	599,014	1,200,210	1,799,224
4	24,636	28,557	53,193
5	9,028	9,028	18,056
6	15,608	19,529	35,137
7	4,282	4,282	8,564
8	11,326	15,247	26,573
9	20,354	24,275	44,629
10	358,974	428,132	787,106
11	.0567	.0567	.0567

DISTRICT THREE—ADJUSTMENT DETERMINATION

Line	Area 6	Area 7	Area 8	Total district
	$2,043,972	$1,004,418	$1,277,802	$4,326,192
2	693,924	269,645	424,070	1,387,639
3	1,324,764	725,005	838,281	2,888,050
4	25,283	9,768	15,451	50,503
5	1,235	1,235	1,235	3,705
6	24,048	8,533	14,216	46,798
7	0	0	0	0
8	24,048	8,533	14,216	46,798
9	25,283	9,768	15,451	50,503
10	445,915	172,274	272,507	890,696
11	.0567	.0567	.0567	.0567

Step 7: Adjustment of Pilotage Rates

(1) The final step in the ratemaking analyses and methodology is to adjust pilotage rates if the calculations from Step 6 indicate that pilotage rates in a pilotage area should be adjusted, and if the Coast Guard determines that a rate adjustment is appropriate.

(2) Pilotage rate adjustments are calculated for each area by multiplying the existing pilotage rates in each area by the rate multiplier. The rate multiplier is calculated by inserting the result from the steps detailed above into the following formula:

Line	Rate multiplier
1	Revenue Needed (from Step 6(C))
2	÷ Projected Revenue (from Step 3)
3	= Rate multiplier

(3) The following are the calculations for the rate multiplier by District and Area:

TABLE A DISTRICT 1—RATE MULTIPLIER

[Revenue Needed ÷ Projected Revenue = Rate Multiplier]

Area 1	$1,249,042	÷$1,041,032	1.20
Area 2	853,346	÷735,224	1.16
District Total	2,102,389	÷1,776,256	1.18

TABLE B DISTRICT 2—RATE MULTIPLIER

[Revenue Needed ÷ Projected Revenue = Rate Multiplier]

Area 4	$1,042,855	÷$824,888	1.26
Area 5	1,728,734	÷1,337,241	1.29

TABLE B DISTRICT 2—RATE MULTIPLIER—Continued

[Revenue Needed ÷ Projected Revenue = Rate Multiplier]

District Total	2,771,589	÷2,162,129	1.28

TABLE C DISTRICT 3—RATE MULTIPLIER

[Revenue Needed ÷ Projected Revenue = Rate Multiplier]

Area 6	$2,043,972	÷$1,760,947	1.16
Area 7	1,004,418	÷864,911	1.16
Area 8	1,277,802	÷1,131,740	1.13
District Total	4,326,192	÷3,757,599	1.15

TOTAL ACROSS ALL DISTRICTS—RATE MULTIPLIER

[Revenue Needed ÷ Projected Revenue = Rate Multiplier]

District One Total	$2,102,389	÷$1,776,256	1.18
District Two Total	2,771,589	÷2,162,129	1.28
District Three Total	4,326,192	÷3,757,599	1.15
All Districts	9,200,170	÷7,695,983	1.20

The seven-step calculation of the methodology is summarized in the tables below for each District.

DISTRICT ONE

	Area 1 St. Lawrence River	Area 2 Lake Ontario	Total district one
Step 1, Projection of operating expenses	$300,682	$348,803	$649,485
Step 2, Projection of target pilot compensation	940,274	494,358	1,434,632
Step 3, Projection of revenue	1,041,032	735,224	1,776,256
Step 4, Calculation of investment base	142,622	179,637	322,259
Step 5, Determination of target return on investment	5.67%	5.67%	5.67%
	8,087	10,185	18,272
Step 6, Adjustment determination	1,249,042	853,346	2,102,389
Step 7, Adjustment of pilotage rates	1.20	1.16	1.18

DISTRICT TWO

	Area 4 Lake Erie	Area 5 South-east Shoal to Port Huron, MI	Total district two
Step 1, Projection of operating expenses	$419,205	$499,967	$919,172
Step 2, Projection of target pilot compensation	599,014	1,200,210	1,799,224
Step 3, Projection of revenue	824,888	1,337,241	2,162,129
Step 4, Calculation of investment base	358,974	428,132	787,106
Step 5, Determination of target return on investment	5.67%	5.67%	5.67%
	20,354	24,275	44,629
Step 6, Adjustment determination	1,042,855	1,728,734	2,771,589
Step 7, Adjustment of pilotage rates	1.26	1.29	1.28

DISTRICT THREE

	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior	Total district three
Step 1, Projection of operating expenses	$693,924	$269,645	$424,070	$1,387,639
Step 2, Projection of target pilot compensation	1,324,764	725,005	838,281	2,888,051
Step 3, Projection of revenue	1,760,947	864,911	1,131,740	3,757,598
Step 4, Calculation of investment base	445,915	172,274	272,507	890,696
Step 5, Determination of target return on investment	5.67%	5.67%	5.67%	5.67%
	25,283	9,768	15,451	50,502

DISTRICT THREE—Continued

	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior	Total district three
Step 6, Adjustment determination	2,043,972	1,004,418	1,277,802	4,326,192
Step 7, Adjustment of pilotage rate	1.16	1.16	1.13	1.15

(4) Based on the above calculations and all the documents and records used in this full-rate adjustment, the Coast Guard has determined it is appropriate to adjust the rates in accordance with the above table.

(5) The Coast Guard amends the pilotage rates for the waters treated in 46 CFR 401.405 through 46 CFR 401.410 by multiplying the current pilotage rates by the rate multiplier for each pilotage Area. The following table shows the percentage changes in rates by Area.

2004 AREA RATE CHANGES

If pilotage service is required in:	Then the rate represents a change over the current rate of: (percent)
Area 1 (Designated waters)	20
Area 2 (Undesignated waters)	16
Area 4 (Undesignated waters)	26
Area 5 (Designated waters)	29
Area 6 (Undesignated waters)	16
Area 7 (Designated waters)	16
Area 8 (Undesignated waters)	13

Regulatory Evaluation

Executive Order 12866, ''Regulatory Planning and Review'', 58 FR 51735, October 4, 1993, requires a determination whether a regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and subject to the requirements of the Executive Order. This rule has been identified as significant under Executive Order 12866 and has been reviewed by OMB and DHS.

This rulemaking provides a 20 percent overall average increase in pilotage rates for the Great Lakes system, effective March 1, 2005. This increase will be a full-rate adjustment in addition to the five percent average partial-rate adjustment provided by the interim rule, 68 FR 69564, December 12, 2003.

These adjustments to Great Lakes pilotage rates meet the requirements set forth in 46 CFR part 404 for similar compensation levels between Great Lakes pilots and industry. They also include adjustments for inflation and changes in the prices for the Associations' expenses, such as insurance fees and pilot travel costs. The full-rate adjustment in this interim rule uses financial data from the 2002 base accounting year. The last full-rate adjustment occurred in 2001 and used financial data from the 1997 base accounting year.

The increase in pilotage rates will be an additional cost for shippers to transit the Great Lakes system. The shippers affected by this full-rate adjustment are those owners and operators of domestic vessels operating on register (employed in the foreign trade) and owners and operators of foreign vessels on a route within the Great Lakes system. These owners and operators must have pilots or pilotage service as required by 46 U.S.C. 9302. There is no minimum tonnage limit or exemption for these vessels. However, the Coast Guard issued a policy position several years ago stating that the statute applies only to commercial vessels and not to recreational vessels.

Owners and operators of other vessels that are not affected by this interim rule, such as recreational boats and vessels only operating within the Great Lakes system, may elect to purchase pilotage services. However, this election is voluntary and does not affect the Coast Guard's calculation of the rate increase and is not a part of our estimated national cost to shippers.

For instance, after a review of some pilot source forms, the forms used to record the actual pilotage transaction on the vessel, we discovered a case of a U.S. Great Lakes vessel, a small tanker without registry, that purchased pilotage services in District One to presumably leave the Great Lakes. This vessel, however, is recorded in the Coast Guard's data as a vessel operating only in the Great Lakes, which would make it exempt from the pilotage requirements. After consulting with the Coast Guard's Office of Great Lakes Pilotage, the determination was made that this vessel voluntarily chose to use pilots because of the type of cargo it was carrying, possibly hazardous, and the inexperience of the vessel's crew to navigate the locks and passages of District One.

We used recent arrival data from the Coast Guard's National Vessel Movement Center (NVMC) to estimate the annual number of vessels affected by the full-rate adjustment to be 217 vessels that, for some, make several journeys or trips into the Great Lakes system. These vessels entered the Great Lakes by transiting through or in part of at least one of the three pilotage Districts before leaving the Great Lakes system. These vessels often make several stops docking, offloading, and onloading at facilities in Great Lakes ports that may or may not involve a pilot. Of the total trips for the 217 vessels, there were a total of 1,095 distinct U.S. port arrivals before the vessels left the Great Lakes system.

We used district pilotage revenues from the independent accountant's

reports of the Districts' financial statements to estimate the additional cost to shippers of the full-rate adjustment. These revenues represent the direct and indirect pilotage costs that shippers must pay for pilotage services in order to transit their vessels in the Great Lakes. Table 1 shows historical pilotage revenues by District.

TABLE 1.—DISTRICT REVENUES
($US)

Year	District 1	District 2	District 3	Total
1998	2,127,577	3,202,374	4,026,802	9,356,753
1999	2,009,180	2,727,688	3,599,993	8,336,861
2000	1,890,779	2,947,798	4,036,354	8,874,931
2001	1,676,578	2,375,779	3,657,756	7,710,113
2002	1,686,655	2,089,348	3,460,560	7,236,563

Source: Annual independent accountant's reports of the Districts to the Coast Guard's Office of Great Lake Pilotage.

While the revenues have decreased over time, the Coast Guard adjusts pilotage rates to achieve a target pilot compensation similar to masters and first mates working on U.S. vessels engaged in the Great Lakes trade.

We estimated the additional cost of the full-rate adjustment to be the difference between the full-rate adjustment revenue (revenue needed) and the projected 2005 revenue. Both of these revenue values are described and calculated in the *Ratemaking Process and Methodology* section of this interim rule. The projected revenue uses the 2002 revenues in Table 1 adjusted for the December 2003 interim rule, partial-rate adjustment, and the expected revenue due to changes in bridge hours. Table 2 compares base year, projected, and adjusted revenues (note: some values may not total due to rounding).

TABLE 2.—BASE YEAR, PROJECTED, AND ADJUSTED PILOTAGE REVENUES [1]

Year	District 1	District 2	District 3	Total
Base Revenue	1,686,655	2,089,348	3,460,560	7,236,563
Projected Revenue [2]. ('Base Revenue' + 'Partial-Rate Adjustment Revenue' + 'Bridge Hour Revenue Changes')	1,776,256	2,162,129	3,757,598	7,695,983
Full-Rate Adjustment Revenue [2] ('Projected Revenue' × 'Full − Rate Adjustment Factor')	2,102,389	2,771,589	4,326,192	9,200,170
Additional Revenue or Cost ('Full-Rate Adjustment Revenue' − 'Projected Revenue')	326,133	609,460	568,594	1,504,187

[1] Some values may not total due to rounding.
[2] For calculation of these figures, see the *Ratemaking Process and Methodology* section of this interim rule.

After applying the full-rate adjustment, the resulting difference between the full-rate adjustment revenue (revenue needed) and the projected revenue is the annual cost for the affected population of this interim rule, because this figure will be equivalent to the total additional payments that shippers will make for pilotage services.

The annual cost of the full-rate adjustment to shippers is approximately $1.5 million (non-discounted). To calculate an exact cost per vessel is difficult because of the variation in vessel types, routes, port arrivals, commodity carriage, time of season, conditions during navigation, and preferences for the extent of pilotage services on designated and undesignated portions of the Great Lakes system. Some owners and operators will pay more and some will pay less depending on the distance and port arrivals of their vessels' trips. However, the annual cost reported above does capture all of the additional cost the shippers will face as a result of this full-rate adjustment.

We estimated the total cost to shippers of the full-rate adjustment over a five-year period, because the Coast Guard is required to determine and, if necessary, adjust Great Lakes pilotage rates at a minimum of at least once every five years from the last full-rate adjustment. However, the Coast Guard does evaluate and analyze the Great Lakes pilotage rates every year, regardless of whether an adjustment is needed or not. The total cost estimate of this interim rule to shippers is discounted present value (PV) $6.6 million (2005–2009, seven percent discount rate).

The cost to shippers of this interim rule is minimal compared with the travel cost shippers save when they use the Great Lakes system. The alternative to Great Lakes waterborne transportation is to choose coastal delivery, such as East Coast and Gulf Coast ports which are more expensive, and extra-modal transportation overland, which is far less practical and has additional transportation costs for all commodity groups. See Coast Guard docket number USCG–2002–11288 for an assessment of alternatives to Great Lakes waterborne transportation and the associated costs entitled ''Analysis of Great Lakes Shipping and the Potential Impact of Pilotage Rate Increases'' (October 1, 2004). This assessment analyzes Great Lakes pilotage charges and their impact on ocean transportation costs as well as total through transportation costs.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this interim rule will have a significant economic impact on a substantial number of small entities in the United States. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

There are two U.S. entities, which are large shipping firms that operate foreign flagged vessels, engaged in foreign trade, in the Great Lakes system that will be affected by the full-rate increase and pay additional costs for pilotage services. The North American Industry Classification System (NAICS) code subsector for these shippers is 483-Water Transportation, and includes one or all of the following 6-digit NAICS codes for freight transportation: 483111-Deep Sea Freight Transportation, 483113-Coastal and Great Lakes Freight Transportation, and 483211-Inland Water Freight Transportation. According to the Small Business Administration's definition, a U.S. company with these NAICS codes and employing less than 500 employees is considered a small entity. These shippers do not qualify as small entities because their number of employees exceeds 500. We assume that new industry entrants will be comparable in size to these shippers with a large enough employee base and the financial resources to support long international trade routes and, thus, will not be small businesses.

There are three U.S. entities that are affected by the interim rule that will receive the additional revenues from the full-rate increase. These are the three pilot Associations that are the only entities providing pilotage services within the Great Lakes Districts. Two of the Associations operate as partnerships and one operates as a corporation. These Associations are classified with the same NAICS industry classification and small entity size standards as the U.S. shippers above, but they have far less than 500 employees: approximately 65 total employees combined. However, they are not adversely impacted with the additional costs of the full-rate increase, but instead receive the additional revenue benefits for operating expenses and pilot compensation.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this interim rule will not have a significant economic impact on a substantial number of U.S. small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES.** In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call Paul Wasserman, Director, Office of Great Lakes Pilotage, (G–MWP–2), U.S. Coast Guard, telephone 202–267–2856 or send him e-mail at *pwasserman@comdt.uscg.mil.*

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism because there are no similar State regulations, and the States do not have the authority to regulate and adjust rates for pilotage services in the Great Lakes system.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because even though it is a ''significant regulatory action'' under Executive Order 12866, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency

provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(a), of the Instruction, from further environmental documentation. An ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are available in the docket where indicated under the section of this preamble on ''Public Participation and Request for Comments.'' We will consider comments on this section before we make the final decision on whether this rule should be categorically excluded from further environmental review.

List of Subjects in 46 CFR Part 401

Administrative practice and procedures, Great Lakes, Navigation (water), Penalties, Reporting and recordkeeping requirements, Seamen.

PART 401—GREAT LAKES PILOTAGE REGULATIONS

■ 1. The authority citation for part 401 continues to read as follows:

Authority: 46 U.S.C. 2104(a), 6101, 7701, 8105, 9303, 9304; Department of Homeland Security Delegation No. 0170.1; 46 CFR 401.105 also issued under the authority of 44 U.S.C. 3507.

■ 2. In § 401.405, revise paragraphs (a) and (b) to read as follows:

§ 401.405 Basic rates and charges on the St. Lawrence River and Lake Ontario.

* * * * *

(a) Area 1 (Designated Waters):

Service	St. Lawrence River
Basic Pilotage	[1] $10 per kilometer or $18 per mile.
Each Lock Transited	[1] $222.
Harbor Movage	[1] $728.

[1] The minimum basic rate for assignment of a pilot in the St. Lawrence River is $486 and the maximum basic rate for a through trip is $2,132.

(b) Area 2 (Undesignated Waters):

Service	Lake Ontario
Six-Hour Period	$379
Docking or Undocking	362

■ 3. In § 401.407, revise paragraphs (a) and (b) to read as follows:

§ 401.407 Basic rates and charges on Lake Erie and the navigable waters from Southeast Shoal to Port Huron, MI.

* * * * *

(a) Area 4 (Undesignated Waters):

Service	Lake Erie (east of Southeast Shoal)	Buffalo
Six-Hour Period	$510	$510
Docking or Undocking	393	393
Any Point on the Niagara River below the Black Rock Lock	N/A	1,003

(b) Area 5 (Designated Waters):

Any point on or in	Southeast Shoal	Toledo or any Port on Lake Erie west of Southeast Shoal	Detroit River	Detroit Pilot Boat	St. Clair River
Toledo or any port on Lake Erie west of Southeast Shoal	$1,211	$715	$1,571	$1,211	N/A
Port Huron Change Point	[1] 2,108	[1] 2,442	1,584	1,232	$876
St. Clair River	[1] 2,108	N/A	1,584	1,584	715
Detroit or Windsor or the Detroit River	1,211	1,571	715	N/A	1,584
Detroit Pilot Boat	876	1,211	N/A	N/A	1,584

[1] When pilots are not changed at the Detroit Pilot Boat.

■ 4. In § 401.410, revise paragraphs (a), (b), and (c) to read as follows:

§ 401.410 Basic rates and charges on Lakes Huron, Michigan, and Superior, and the St. Mary's River.

* * * * *

(a) Area 6 (Undesignated Waters):

Service	Lakes Huron and Michigan
Six-Hour Period	$390
Docking or Undocking	370

(b) Area 7 (Designated Waters):

Area	De tour	Gros cap	Any other harbor
Gros Cap	$1,383	N/A	N/A
Algoma Steel Corporation Wharf at Sault Ste. Marie, Ontario	1,383	$521	N/A
Any point in Sault Ste. Marie, Ontario, except the Algoma Steel Corporation Wharf	1,159	521	N/A
Sault Ste. Marie, Michigan	1,159	521	N/A

Area	De tour	Gros cap	Any other harbor
Harbor Movage	N/A	N/A	$521

(c) Area 8 (Undesignated Waters):

Service	Lake Superior
Six-Hour Period	$351
Docking or Undocking	334

§ 401.420 [Amended]

■ 5. In § 401.420—

■ a. In paragraph (a), remove the number ''$56'' and add, in its place, the number ''$67''; and remove the number ''$873'' and add, in its place, the number ''$1,048''.

■ b. In paragraph (b), remove the number ''$56'' and add, in its place, the number ''$67''; and remove the number ''$873'' and add, in its place, the number ''$1,048''.

■ c. In paragraph (c)(1), remove the number ''$330'' and add, in its place, the number ''$396''; in paragraph (c)(3), remove the number ''$56'' and add, in its place, the number ''$67''; and, also in paragraph (c)(3), remove the number ''$873'' and add, in its place, the number ''$1,048''.

§ 401.428 [Amended]

■ 6. In § 401.428, remove the number ''$337'' and add, in its place, the number ''$404''.

Dated: March 4, 2005.

Thomas H. Collins,

Admiral, U.S. Coast Guard, Commandant.

[FR Doc. 05–4586 Filed 3–4–05; 1:58 pm]

BILLING CODE 4910–15–P

Federal Register

Thursday,
March 10, 2005

Part IV

Department of Labor

Veterans' Employment and Training Service

20 CFR Part 1002

Notice of Rights and Duties Under the Uniformed Services Employment and Reemployment Rights Act; Interim Final Rule

DEPARTMENT OF LABOR

Veterans' Employment and Training Service

20 CFR Part 1002

RIN 1293–AA14

Notice of Rights and Duties Under the Uniformed Services Employment and Reemployment Rights Act

AGENCY: Veterans' Employment and Training Service, Department of Labor.

ACTION: Interim final rule; request for comments.

SUMMARY: The Veterans' Employment and Training Service (VETS) of the Department of Labor (Department of DOL) is issuing this interim final rule to implement a requirement of the Veterans Benefits Improvement Act of 2004 (VBIA), Pub. Law 108–454 (Dec. 10, 2004). The VBIA amended the Uniformed Services Employment and Reemployment Rights Act (USERRA) by adding a requirement that employers provide a notice of the rights, benefits, and obligations of employees and employers under USERRA. The text of this notice is included in this interim final rule. This interim final rule does not affect the Department's pending proposal to implement the USERRA, which was published in the **Federal Register** of September 20, 2004.

DATES: *Effective Date:* This interim final rule is effective March 10, 2005.

Comment Date: Interested persons are invited to submit written comments on this interim final rule. To ensure consideration, comments must be received on or before May 9, 2005.

ADDRESSES: You may submit comments, identified by ''Docket No. VETS–U–05,'' by any of the following methods:

Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the Web site instructions for submitting comments.

Electronic mail: Comments may be submitted by e-mail to: *vetspublic@dol.gov.* Include ''Docket No. VETS–U–05'' on the subject line of the message. You can attach materials that are in Microsoft Office formats such as Word, Excel, and Power Point. Attachments may also be made using Adobe Acrobat, Word Perfect, or ASCII/text documents. You cannot attach materials using executables (.exe, .com, .bat) or any encrypted zip files.

Facsimile (fax): VETS at (202) 693–4754.

Mail, Express Delivery, Hand Delivery, and Messenger Service: Submit an original and three copies of written comments and attachments to the Office of Operations and Programs, Docket No.VETS–U–05, Room S–1316, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210; telephone (202) 693–4711. If possible, provide your written comments on a computer disc. Contact Mr. Gary Smith at (202) 693–4724 with any formatting questions. Normal hours of operation for the VETS Office of Operations and Programs and the Department of Labor are 8:15 a.m. to 4:45 p.m., Eastern Time, Monday through Friday (except Federal holidays). Note that security-related problems may result in significant delays in receiving comments and other written materials by regular mail. Because DOL continues to experience delays in receiving postal mail in the Washington, DC area, commenters are encouraged to submit any comments by mail early. Contact Mr. Kenan Torrans, VETS Office of Operations and Programs, at (202) 693–4731 for information regarding security procedures concerning delivery of materials by express delivery, hand delivery, and messenger service.

Docket Access: All comments and submissions will be available for inspection and copying in the VETS Office of Operations and Programs at the address above during normal hours of operation. Contact Mr. Kenan Torrans, VETS Office of Operations and Programs, at (202) 693–4731 for information about access to the docket submissions. Because comments sent to the docket are available for public inspection, the Agency cautions commenters against including in their comments personal information such as social security numbers and birth dates. Persons who need assistance to review the comments will be provided with appropriate aids such as readers or print magnifiers. Copies of this interim final rule may be obtained in alternative formats (*e.g.*, large print, Braille, audiotape, or disk) upon request.

FOR FURTHER INFORMATION CONTACT: For information, contact Mr. Kenan Torrans, Office of Operations and Programs, Veterans' Employment and Training Service (VETS), U.S. Department of Labor, Room S1316, 200 Constitution Ave., NW., Washington, DC 20210. Telephone: (202) 693–4731 (this is not a toll-free number). Electronic mail: *torrans-william@dol.gov.* For press inquiries, contact Michael Biddle, Office of Public Affairs, U.S. Department of Labor, Room S–1032, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 693–5051 (this is not a toll-free number). Electronic mail: *biddle.michael@dol.gov.*

Individuals with hearing or speech impairments may access the telephone numbers above via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Veterans Benefits Improvement Act of 2004 (VBIA), Pub. Law No. 108–454 (Dec. 10, 2004), amended several provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), 38 U.S.C. 4301–4333. In part, the VBIA imposed a new requirement, to be codified at 38 U.S.C. 4334, that ''Each employer shall provide to persons entitled to rights and benefits under [USERRA] a notice of the rights, benefits, and obligations of such persons and such employers under [USERRA].'' Employers may provide the notice by posting it where employee notices are customarily placed. However, employers are free to provide the notice to employees in other ways that will minimize costs while ensuring that the full text of the notice is provided (*e.g.*, by handing or mailing out the notice, or distributing the notice via electronic mail).

The VBIA requires the Secretary of Labor to make available to employers the text of the required notice not later than March 10, 2005, ninety days after the enactment of the VBIA. The publication of this interim final rule containing the text of the notice is pursuant to this Congressional mandate. Effective March 10, the VBIA requires employers to provide the notice ''to persons entitled to rights and benefits'' under USERRA.

The VBIA also created a demonstration project under which about half of the claims against Federal executive agencies arising under USERRA will be transferred by the Department of Labor to the Office of Special Counsel. Section 204(a) of the VBIA directs the ''Secretary of Labor and the Office of Special Counsel [to] carry out a demonstration project under which certain claims against Federal executive agencies under [USERRA] are referred to * * * the Office of Special Counsel for assistance, including investigation and resolution of the claim as well as enforcement of rights with respect to the claim.'' Under this demonstration project, the Secretary of Labor transfers to OSC those cases involving Federal executive agency employees with odd-numbered social security numbers. The demonstration project began on February 8, 2005, and will end on September 30, 2007.

USERRA provides employment and reemployment rights for members of the uniformed services, including veterans and members of the Reserve and National Guard. Under USERRA, service members who leave their civilian jobs for military service can perform their duties with the knowledge that they will be able to return to their jobs with the same pay, benefits, and status they would have attained had they not been away on duty. USERRA also prohibits employers from discriminating against these individuals in employment because of their military service.

Over 460,000 members of the National Guard and Reserve have been mobilized since the President's declaration of a national emergency following the attacks of September 11, 2001. As service members conclude their tours of duty and return to civilian employment, it is important that employees be fully informed of their USERRA rights, benefits, and obligations. It is also important for service members to know how the Department can assist them in enforcing these rights. Providing employees with a notice of the USERRA rights, benefits, and obligations of employees and employers advances these objectives.

The publication of this interim final rule does not affect the Department's pending proposal to issue regulations implementing the USERRA, which was published in the **Federal Register** of September 20, 2004, and which is expected to result in a final rule in 2005.

II. Administrative Information

Executive Order 12866—Regulatory Planning and Review

The interim final rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that this proposed rule is not an ''economically significant'' regulatory action under section 3(f)(1) of Executive Order 12866. Based on a preliminary analysis of the data, the rule is not likely to: (1) Have an annual effect on the economy of $100 million; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; or (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. As a result, the Department has concluded that a full economic impact and cost/benefit analysis is not required for the interim final rule under Section 6(a)(3) of the Order. However, because of its importance to the public the interim final rule is a significant regulatory action and was reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, Public Law 96–354 (94 Stat. 1164; 5 U.S.C. 601 *et seq.*), Federal agencies are required to analyze the anticipated impact of proposed rules on small entities. VETS has notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to the Regulatory Flexibility Act at 5 U.S.C. 605(b), that this interim final rule will not have a significant economic impact on a substantial number of small entities.

The basis for that certification is that this interim final rule will not have a significant economic impact on any employers because it only makes available to them information required to be posted or disseminated by statute. This information concerns employee rights, benefits, and obligations already available under Federal law. Accordingly, VETS concludes that the final rule will not have a significant economic impact on a substantial number of small business entities. Therefore, under the Regulatory Flexibility Act, 5 U.S.C. 605(b), a regulatory flexibility analysis is not required.

The Small Business Administration (SBA) estimates in ''A Guide for Government Agencies—How to Comply with the Regulatory Flexibility Act'' (May 2003), that 23 percent of business tax returns are filed by firms with employees. *http://www.sba.gov/advo/laws/rfaguide.pdf.* Internal Revenue Service statistics for Fiscal Year 2003 indicate that 29,916,033 business tax returns were filed. *http://www.irs.gov/pub/irs-soi/03db03nr.xls.* Using the 23 percent SBA estimate, there were approximately 6,880,690 private employers with employees in FY 2003. For purposes of comparison, the U.S. Census Bureau cites a figure of at least 7,743,444 business establishments with employees for the year 2002, the most recent year for which such statistics are available. *See http://www.census.gov/econ/census02/advance/TABLE1.HTM.* Consequently, VETS estimates that in FY2005 fewer than 8,000,000 private employers with employees are potentially covered by this interim final rule. Assuming a cost of $.15 for reproducing a copy of the notice and .1 hour of clerical time at $19.05 per hour (based on National Compensation Survey: Occupational Wages in the United States, July 2002, Bureau of Labor Statistics, U.S. Department of Labor, June 2003) to post or otherwise disseminate the notice, the per-employer cost for providing employees the notice contained in this interim rule is approximately $2.00 and the total cost for all private employers to comply is less than $16,000,000. Consequently, VETS concludes that the cost of compliance will not have a significant economic impact on a substantial number of small entities.

The Department welcomes comments on this Regulatory Flexibility Act certification.

Unfunded Mandates Reform Act of 1995

This interim final rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. USERRA applies to all public employers. The Census Bureau lists a total of 265,641 State and local governments in its 2002 Compendium of Public Employment; *http://www.census.gov/prod/2004pubs/gc023x2.pdf.* Consequently, VETS estimates that fewer than 300,000 State and local employers are covered by this interim final rule. Assuming a cost of $.15 for reproducing a copy of the notice and .1 hour of clerical time at $19.05 per hour (based on National Compensation Survey: Occupational Wages in the United States, July 2002, Bureau of Labor Statistics, U.S. Department of Labor, June 2003) to post or otherwise disseminate the notice, the per-employer cost for providing employees the notice contained in this interim rule is less than $2.00 and the total cost for all State and local employers to comply is less than $600,000, and as discussed above the total cost for all private employers to comply is less than $16,000,000. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This interim final rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996 (SBREFA). The standards for determining whether a rule is a major rule as defined by section 804 of SBREFA are similar to those used to determine whether a rule is an ''economically significant regulatory action'' within the meaning of Executive Order 12866. Because VETS certified that this interim final rule is not an economically significant rule under Executive Order 12866, VETS certifies that it also is not a major rule under SBREFA. It will not result in an annual effect on the economy of $100 million

or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 13132—Federalism

This interim final rule will not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, VETS has determined that this interim final rule does not have sufficient federalism implications to warrant the preparation of a summary impact statement.

Paperwork Reduction Act

The public disclosure of information supplied by the Federal government to the recipient for the purpose of disclosure to the public is not included within the definition of ''collection of information'' under the Paperwork Reduction Act (PRA). See 5 CFR 1320.3(c)(2). Here, the notice made available by this interim final rule is supplied by the Department of Labor. Consequently, the Department believes the Paperwork Reduction Act is inapplicable to this interim final rule. The Department invites the public to comment on its Paperwork Reduction Act analysis.

Publication as an Interim Final Rule

The Department has determined that it is impracticable to publish this notice of USERRA rights, benefits, and obligations as a Notice of Proposed Rulemaking, with the delays inherent to the process of publishing a proposed rule, receiving and reviewing comments, and preparing and publishing a final rule. Moreover, USERRA is enforceable by private citizens, the Department of Justice, and the Office of Special Counsel, so any potential harm to employers caused by delay in publication cannot be ameliorated solely through the exercise of the Department's administrative discretion to defer enforcement proceedings. This interim final rule will allow timely transmittal to affected parties of the text of the notice required by the VBIA amendment, within the short timeframe mandated by Congress. Therefore, the Department finds pursuant to 5 U.S.C. 553(b)(3)(B) that good cause exists for publishing this notice as an interim final rule.

The Department invites the public to comment on this interim final rule. The Department will consider the comments received and, through the issuance of a final rule, make adjustments to the text of the notice as is required or advisable. Consequently, the content of the notice contained in this interim final rule will gain the full benefit of public notice and comment.

List of Subjects in 20 CFR Part 1002

Administrative practice and procedure, Employment, Enforcement, Labor, Veterans, Working conditions.

■ For the reasons stated in the preamble, the Veterans' Employment and Training Service, Department of Labor, adds a new part 1002 to chapter IX of title 20 of the Code of Federal Regulations to read as follows:

PART 1002—REGULATIONS UNDER THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT OF 1994

Sec.

Authority: Veterans Benefits Improvement Act of 2004 (VBIA), Pub. L. 108–454 (Dec. 10, 2004).

PART 1002—REGULATIONS UNDER THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT OF 1994

Appendix to Part 1002—Your Rights Under USERRA

A. The Uniformed Services Employment and Reemplyment Rights Act

USERRA protects the job rights of individuals who voluntarily or involuntarily leave employment positions to undertake military service. USERRA also prohibits employers from discriminating against past and present members of the uniformed services, and applicants to the uniformed services.

B. Reemployment Rights

You have the right to be reemployed in your civilian job if you leave that job to perform service in the uniformed service and:

- You ensure that your employer receives advance written or verbal notice of your service;
- You have five years or less of cumulative service in the uniformed services while with that particular employer;
- You return to work or apply for reemployment in a timely manner after conclusion of service; and
- You have not been separated from service with a disqualifying discharge or under other than honorable conditions.

If you are eligible to be reemployed, you must be restored to the job and benefits you would have attained if you had not been absent due to military service or, in some cases, a comparable job.

C. Right to be Free From Discrimination and Retaliation

If you:

- Are a past or present member of the uniformed service;
- Have applied for membership in the uniformed service; or
- Are obligated to serve in the uniformed service;

then an employer may not deny you

- Initial employment;
- Reemployment;
- Retention in employment;
- Promotion; or
- Any benefit of employment.

because of this status.

In addition, an employer may not retaliate against anyone assisting in the enforcement of USERRA rights, including testifying or making a statement in connection with a proceeding under USERRA, even if that person has no service connection.

D. Health Insurance Protection

- If you leave your job to perform military service, you have the right to elect to continue your existing employer-based health plan coverage for you and your dependents for up to 24 months while in the military.
- Even if you don't elect to continue coverage during your military service, you have the right to be reinstated in your employer's health plan when you are reemployed, generally without any waiting periods or exclusions (*e.g.*, pre-existing condition exclusions) except for service-connected illnesses or injuries.

E. Enforcement

- The U.S. Department of Labor, Veterans Employment and Training Service (VETS) is authorized to investigate and resolve complaints of USERRA violations.

For assistance in filing a complaint, or for any other information on USERRA, contact VETS at 1–866–4–USA–DOL or visit its website at *http://www.dol.gov/vets.* An online guide to USERRA can be viewed at *http://www.dol.gov/elaws/userra.htm.*

- If you file a complaint with VETS and VETS is unable to resolve it, you may request that your case be referred to the Department of Justice or the Office of Special Counsel, depending on the employer, for representation.
- You may also bypass the VETS process and bring a civil action against an employer for violations of USERRA.

The rights listed here may vary depending on the circumstances. This poster was prepared by VETS, and may be viewed on the internet at this address: *http://www.dol.gov/vets/programs/userra/poster.pdf.* Federal law requires employers to notify employees of their rights under USERRA, and employers may meet this requirement by displaying this poster where they customarily place notices for employees.

U.S. Department of Labor, Veterans Employment and Training Service, Washington, DC 20210, 1–866–487–2365.

Publication Date—March 2005.

Signed at Washington, DC, this 8th day of March, 2005.

Frederico Juarbe Jr.,

Assistant Secretary for Veterans' Employment and Training.

[FR Doc. 05–4871 Filed 3–9–05; 8:45 am]

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LIST OF PUBLIC LAWS

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